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# Supreme Court of the United States

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BOY SCOUTS OF AMERICA and MONMOUTH COUNCIL, BOY SCOUTS OF AMERICA,

*Petitioners,*

v.

JAMES DALE,

*Respondent.*

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**On Writ of Certiorari to the Supreme Court of New Jersey**

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## JOINT APPENDIX
**Volume III**

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5-10-93

JIM DICK

Good evening, my name is James Dick. I am 17 years old and in my senior year of high school at The Marine Academy of Science and Technology located at Sandy Hook. I am also a Life Scout working toward my Eagle Scout award with Troop 73, sponsored by Matawan First United Methodist Church.

Tonight I would like to share with you some thoughts about my involvement in Scouting. I started in Scouting as an 8 year old Cub Scout in Pack 142, sponsored by Village Elementary School in Middletown. We did many exciting and interesting things as Cub Scouts, but what stands out most in my mind about Cub Scouting is the fun we had racing the Pinewood Derby cars. A Pinewood Derby car is made from a one foot long solid box piece of pine wood. The Cub Scout and his dad or mom carves the car into the shape they desire. Now you would think the toughest part of building a car would probably deal with its design, but in reality the toughest part is keeping your parents from playing with it. It was a very interesting phenomenon to see mature, intelligent adults getting overly excited about graphite wheels and decals.

But all kidding aside, the fun of working with my parents in building that car will be a memory I will treasure forever. Because of Cub Scouting, I was able to have fun and learn different aspects about myself, my parents, and others in my community.

I went from Cub Scouting to being a Boy Scout in 1981. For those of you who don't understand, let me explain the significance involved in that transition. The Cub Scout program is based upon family participation. It's a good chance for the whole family to come together as a unit and participate in fun and interesting events. And although I enjoyed it tremendously, becoming a Boy Scout opened up the door to adventure and self reliance. One of the proudest moments of my life was the day I crossed the bridge in a Scouting ceremony from the Cub Scouts to Boy Scouts. The transition made me feel like I was embarking upon new opportunities in my life. From that day on I knew that people would rely on me to do things, and it was my responsibility to get those things done. For example, in Cub Scouts adult leaders planned meetings and events for you. However, in Boy Scouts it is the responsibility of the youth leadership to plan and organize the events and meetings.

Unlike most Scouts, I have had the opportunity to be involved in three different troops, which in itself is a unique experience. Because Scouting is so widespread throughout our community, I had the opportunity to make friends in three different areas. One gentleman I am proud to call my friend is a man named Norman Eugene Powell. Mr. Powell was my second Scoutmaster. He is an Englishman who was born in South Africa and is related to Lord Baden Powell, the founder of the Scouting movement. Mr. Powell is an unselfish individual who taught me all the outdoor skills I possess and more importantly the empathy that I have toward individuals. My association with Mr. Powell has made me a better person and I am thankful that I had that opportunity. And speaking of opportunities, Scouting has offered me plenty.



While I was a First Class Scout, I was elected into the Order of the Arrow. The Order of the Arrow is the Boy Scouts honor camper organization. As a member of the OA, I took an interest in Indian lore and joined the ceremonies team. Later I became the chairman. For myself, there are few things I enjoy more than acting, especially when it is something you strongly believe in. The OA has helped teach me leadership and the importance of working together with a group to get a goal completed. The OA, like the Boy Scouts itself, is a service organization. The OA helps Boy Scouts and the community. An example of a community activity the OA takes part in is the Columbus Day landing at the Asbury Park boardwalk. At this event the OA ceremonies team and dance team dress in Indian regalia and take part in a reenactment of meeting Columbus. This event is one that I always enjoy, even though it gets quite cold in Asbury Park in October wearing an Indian costume. Perhaps you saw my picture in color on the front page of the Asbury Park Press a couple of weeks ago.

Another opportunity Scouting has afforded me was attending the 1985 National Jamboree held at Fort A. P. Hill in Virginia. When we (that is, our council contingent) arrived at 4:00 p.m. on the day prior to the Jamboree, there were little more than a few hundred people there. However, by the next day Fort A. P. Hill became the third largest city in Virginia.

The experience of meeting people from all over the world, the rigors of living for a week in a tent, the lesson learned about cooperation and teamwork will stay with me for the rest of my life.

Yes, Scouting offers many opportunities, but the one most important presently to me, is the opportunity to become an Eagle Scout. Being an Eagle represents the best one can be. It symbolizes everything good that this country stands for. It says to others that you stand for what is righteous, virtuous, and moral. It marks you as a person concerned with your town, community, and nation. It also identifies you as a person concerned enough to care, and hopefully in the near future I can count myself among this honored group.

This brief little history of my personal Scouting life has hopefully left with you the impression that Scouting is fun, exciting, challenging, and most importantly worthwhile.

But what it hasn't done up to this point (although I am sure you assumed from my speech) is to express my personal thanks and gratitude and to say thank you to you on behalf of the over 15,000 youth of our county presently benefiting from Scouting. Your support of Scouting is gratefully appreciated, and believe me, I should know because I am benefiting presently from the program.

It costs Scouting a lot of money yearly to offer the opportunities extended to youth like me, but the dollars are well spent and modest as compared to the other less productive possibilities that exist for young people to pursue.

Without concerned people like yourselves, I may never have joined the Boy Scouts. As a youth, I know that there are many things that prevent boys from joining Scouting. Many youth are misled into lives that lead to trouble, whether it is because of drugs or peer pressure from other misguided youth. But Scouting offers an alternative. In closing let me offer this analogy, most youth have two different doors to



choose from in life -- the right one and the wrong one. If the right door is not available or open, there is only one door left to choose. With that in mind, I ask for your continued support of the Scouting program and I thank you for your support thus far. Scouting is something that has helped structure my life and I know that it is a beneficial program for the development of all the youth of our county.

Thank you and good night.

The New York Times 8/5/92 [Handwritten]
New Jersey

From an Eagle Scout To Persona Non Grata

In June 1990, James Dale, a former Eagle Scout, was an assistant Scoutmaster and self-described scouting "poster boy," with 30 merit badges and uncounted hours of service to his name.

By that July, Mr. Dale was an ex-Boy Scout.

In the interim, scouting officials had learned he was gay.

Last week, Mr. Dale went to court against the Monmouth Boy Scout Council in New Jersey; the suit he filed is one of several nationwide pressuring the scouts to abandon their policy of barring homosexuals.

Mr. Dale, a 21-year-old senior at Rutgers University, is seeking reinstatement to the Scouts. There is a principle at stake in his suit, he said, but there is also the simple wish to resume his connection to the scouts, which he said had provided a sense of belonging since he was 8 years old.

"I want to get back my right and privilege to be active as an adult scouter," Mr. Dale said in a recent phone interview. "This isn't a vendetta against every Boy Scout in Monmouth County or in America. There's nothing wrong with the Boy Scouts except that they discriminate."

An Issue of Control

The Monmouth Council of the Boy Scouts of America maintains that Mr. Dale does not meet the standards of leadership set by the national organization, which prohibits



homosexuals. And James Kay, the executive director of the Monmouth Council said: "The issue is purely and simply one that says we have a right to set standards for membership."

The suit has brought Mr. Dale recognition, a mixed blessing.

"It's been hard being seen as somebody who is a gay activist," said Mr. Dale, who studies sociology, communications and theater. "People know one small part of my life without knowing the other facets."

Occasionally, those people are also gay Boy Scouts, young men who Mr. Dale has found himself counseling, against his instincts, to keep their sexual orientation private.

"There's a lot to gain through scouting," he said, "and the fact is if they want to be a part of that, they have to hide who they are. It sends the wrong message to gay people and it is against everything scouting teaches about honesty and character.

Mr. Dale, the younger son of a lieutenant colonel in the Army reserves, is a graduate of the Marine Academy of Science and Technology in Sandy Hook, N.J., a military high school. By his senior year, he was a company commander, the second-highest student rank.

"I didn't really know for sure that I was gay until my second year at college," he said. "I remember hoping to God that I wouldn't be gay. It wasn't part of my big picture."

Two years ago, he told his parents he was gay. Months later, after his photograph appeared in a local newspaper article on a gay youth conference, he received a letter telling him he was expelled from the scouts.

"I realized I'd be risking things, and I knew this would be one of them," Mr. Dale said. "But I also realized they could be pretty sexist, pretty classist, and pretty homophobic, and because of that for the first time I questioned whether this was an organization I wanted to be involved with anymore."

Still, the formal rebuke was chilling.

"When they wrote me that expulsion letter saying basically they want nothing to do with me, I took all my scouting stuff, my merit badges, my uniform, knapsack, every bit of paraphernalia and put it in a box, and put the box in the attic," Mr. Dale said. "I felt very, very betrayed."

This betrayal seemed particularly sharp because it came at a time when the scouts are hunting for adult volunteers.

"They were thrilled to have me as a leader because I had all this experience," said Mr. Dale, who had been an assistant Scoutmaster with Troop 73 in Matawan, N.J.

"I've realized that it's wrong to walk away from an entire organization just because some people at the top are preaching hate," said Mr. Dale, who is spending the summer as a volunteer with Forgotten Scouts, an educational lobby in San Francisco run by a growing number of other young men who, like Mr. Dale, have been cast out of the organization because of their sexual orientation.

"The Scouts taught me to believe in things with conviction, and that's exactly what I'm doing," Mr. Dale said. "Now, they don't seem to like it so much."



The New York Times July 30, 1992 [Handwritten]
New Jersey

Ex-Eagle Scout Sues Over Ban on Homosexuals

TRENTON, N.J., July 29 (AP) — James Dale says the Boy Scouts taught him to take pride in who he is. Today he sued the organization, saying his membership was revoked two years ago after the Scouts found out he was gay.

"I owe it to the organization to point out to them how bad and wrong this policy is," said Mr. Dale, a 21-year-old Rutgers student and former Eagle Scout. "Being proud about who I am is something the Boy Scouts taught me. They taught me to stand up for what I believe in."

The Monmouth Council of the Boy Scouts of America said Mr. Dale did not meet the standards of leadership set by the national organization, which prohibits homosexuals.

Blake Louis, spokesman of the Boy Scouts of America, based in Dallas, said: "We don't think a homosexual presents a role model that's consistent with the expectations of mainstream American families."

And James Kay, the executive director of the Monmouth Council, said: "The issue is purely and simply one that says we have a right to set standards for membership."

30 Merit Badges

Mr. Dale, of Port Monmouth, was an Eagle Scout, the highest rank in scouting, with Troop 73 in Matawan and held 30 merit badges. He received a letter in August 1990 saying his membership was terminated, said his lawyer, Evan

Wolfson. When asked why, the Monmouth Council told Mr. Dale it was because he was gay, the lawyer said.

The Boy Scouts learned of Mr. Dale's sexual orientation after a newspaper article appeared about a seminar on gay and lesbian youth at which he was a speaker.

The lawsuit in Monmouth County Superior Court, against the Monmouth Council and the Boy Scouts of America, was filed under a state law that took effect this year prohibiting discrimination on the basis of sexual orientation. The suit asks the court to reinstate Mr. Dale's membership and award him compensatory damages.

A similar case against the Boy Scouts is pending in California, said Mr. Louis, the Scout spokesman.



THE STAR-LEDGER
ACCENT: HEALTH/FITNESS July 8, 1990

## Seminar Addresses Needs of Homosexual Teens

By KINGA BORONDY

Homosexual teenagers have no true peers or support group to help them through the turbulent adolescent period of their lives, when even heterosexual youths are confused and insecure about their sexuality, according to a lecturer at a recent seminar.

"It (sexuality) is an issue facing all teenagers," said Mary Leddy, director of community and counseling services for the Planned Parenthood League of Middlesex County. She was speaking at a day-long seminar held at Rutgers University on the human and social service response to the needs of the lesbian and gay community.

The conference was sponsored by several groups, including the National Association of Social Workers-New Jersey Task Force on Lesbian/Gay Issues, the Personal Liberty Fund of the New Jersey Lesbian and Gay Coalition, and the Planned Parenthood League of Middlesex County, with the Rutgers University School of Social Work.

While youths start developing toward sexual maturity at an early age — girls at about 12 years old and boys at 13 — they are not emotionally mature, and society does not accept them as sexual beings, Leddy said.

"They aren't supposed to get pregnant, get AIDS or get a socially transmitted disease (syphilis, gonorrhea), but society doesn't give them a healthy, positive form of sexual

expression," Leddy said, finding fault with many family life curriculums, which she claims are more like courses in plumbing.

"Adults can't handle seeing teenagers being sexually active," Leddy said.

She feels existing family life curriculums don't help adolescents talk about their problems, gain a positive body image or make decisions about their sexuality.

Many teenagers are driven underground in their quest for information about sex when the adults in their lives project a sense that they are uncomfortable talking about the topic.

In addition to adult aloofness, there is pressure for the adolescents to fit into a rigid mold established by their peer group — boys are pushed to prove their masculinity and girls to be feminine

The girls are unsure whether there are any advantages to being a woman; they dislike their bodies, Leddy said.

On top of this maelstrom of emotion — insecurity, isolation — homosexual teenagers are burdened with feelings of self-hate, shame, guilt and self-loathing.

"They will deny their sexuality. They don't understand what's going on," Leddy said.

Some youngsters block out same-sex experience or become promiscuous with members of the opposite sex in an effort to deny their orientation, she said.

"The homosexual teenagers have no role models or true peers," Leddy said.



Many of the teenagers withdraw in fear that their orientation will be discovered. Many feel invisible, as if they don't exist, or they feel they are horrible people, especially in light of the homophobic nature of adolescence, Leddy said.

James Dale, 19, co-president of the Rutgers University Lesbian Gay Alliance with Sharice Richardson, also 19, said he lived a double life while in high school, pretending to be straight while attending a military academy.

He remembers dating girls and even laughing at homophobic jokes while at school, only admitting his homosexuality during his second year at Rutgers.

"I was looking for a role model, someone who was gay and accepting of me," Dale said, adding he wasn't just seeking sexual experiences, but a community that would take him in and provide him with a support network and friends.

Richardson said that while she was growing up, she never understood her female classmates' crushes on boys. "I would say 'that's nice' and go play basketball."

When she told her mother and stepfather about her relationship with a female friend, it prompted her family to move to another town. The change in schools, the loss of her girlfriend and the isolation she felt triggered suicidal thoughts.

At her new school, she tried to talk to a sympathetic-appearing teacher who froze her in mid-sentence, ordering her never to mention the topic again. In desperation, she turned to the school chaplain, who "helped, he was open-minded and understanding."

When she started telling her peers about her homosexuality, she finally found the support she needed. "My friends didn't react badly at all," Richardson said.

Teenagers are particularly at risk from AIDS and other sexuality transmitted diseases, substance abuse and violence from their self-destructive behavior, Leddy said. They have secret, anonymous sexual encounters which they deny, and they fail to practice safe sex, she said.

Many suffer from depression and a lack of social coping skills, and 20 percent to 35 percent have tried suicide, Leddy said.

"At least 50 percent of the homeless teenagers in urban areas are gay. May have been kicked out by their parents, some have been victims of gay bashing," Leddy said.



Philadelphia (Jan. 1993)

## THE GAY BOY SCOUT

EVEN NOW, MOVING ACROSS THE RUTGERS University campus in blue jeans and a white T-shirt, a backpack slung over his shoulder, James Dale looks like a Boy Scout. He propels his 6'1" frame through the crowds with long, loping strides that make him appear still gangly at the age of 22. His clean-shaven face seems symmetrical, chiseled and strong from certain angles, lopsided and vulnerable from others. It would surprise no one to learn that Dale devoted 12 years of his life to scouting, earning 30 merit badges and rising to Eagle Scout, the highest rank. The only deviations from this Normal Rockwell portrait are the black combat boots and the Dr. Seuss characters on his T-shirt, meant to symbolize diversity: "One fish, two fish, red fish, blue fish." It's not the sort of thing scouting officials in Monmouth County, New Jersey, would have noticed. But then again, they were the last ones to discover that their perfect scout had a secret.

James Dale was five years old when he first fell in love with the dark olive shorts, knee-high socks and epaulets and badges that conferred authority and honor. The uniform reminded him of the one his father wore as a lieutenant colonel in the U.S. Army Reserves. Since Dale couldn't become a Boy Scout until he was 11, he joined the Cub Scouts at eight, then a preparatory program called Webelos, short for "We'll Be Loyal Scouts." Finally, one glorious

[PICTURES OMITTED]

day at the Middletown (New Jersey) Village School, he was admitted to Boy Scout Troop 220. He stood at attention among his closest friends, made the three-finger Scout sign and swore to live in accordance with the Scout Oath:

> On my honor, I will do my best
> To do my duty to God and my country and
> to obey the Scout law;
> To help other people at all times;
> To keep myself physically strong, mentally
> awake, and morally straight.

WHEN BOYS REACH A CERTAIN AGE, OF COURSE, SUCH SENTIMENTS begin to sound like a crock. Parading about in paramilitary uniforms and earning merits badges in traffic safety can seem pretty dorky to a teenager. By the time they had reached puberty, most of Dale's friends had blown off scouting.

But Dale was different. He loved learning to survive in the wilderness—building fires, cooking, navigating, backpacking, watching the stars. His first summer he earned one of the most difficult merit badges, environmental science. Over the next two years, he quickly moved up in rank: Tenderfoot, Second Class, First Class, Star....

As he got older, the Scout Oath meant more to Dale than ever before. He had completely absorbed the values of his middle-class, Protestant, Republican family. He decided to enroll in a military high school in Sandy Hook that required a uniform two days a week and regular marching drills. He made the honor society at the Marine Academy of Science and Technology and rose to lieutenant commander, the



second-highest rank in his school. His ambition was to get a degree in economics and become a stockbroker. Later—at 18—he would vote for George Bush.

Scouting fitted seamlessly into such a highly structured life. It also gave him a perfect escape from the social pressures of high school, which often left him feeling awkward and inadequate. Though Dale had friends, he wasn't especially popular. He was not a great athlete, spending his time during most soccer games riding the bench.

"At Boy Scouts, I was always doing something that was considered important and valuable," he says today. "And that was really good for me as an adolescent." As long as he adhered to Scout Law, Dale knew, he would always be welcome. Being trustworthy, loyal, helpful, friendly, courteous, kind, obedient, cheerful, thrifty, brave, clean and reverent was no problem." Those were the values he'd grown up with.

Dale embodied those virtues so well, in fact, that when he was 13, his troop gave him one of its highest honors—electing him to a secret society called the Order of the Arrow, also known as the Brotherhood of Cheerful Service. He was inducted during a dramatic ceremony in the woods that incorporated Native American rituals and costumes.

As the years went by and his friends dropped out of scouting, the Order of the Arrow offered him an important peer group of adults. "A lot of the formality was gone," he says. "The adults weren't Mr. So-and-so anymore, but Tom and Joe." When officials at the Monmouth County Boy Scout Council needed a model scout to speak at their fund-raising banquets, they chose Dale. He rose to chairman of the Order

of the Arrow ceremonies team, inducting some adults twice his age. Dale was also becoming an important role model for the younger scouts. As he developed a man's shape and his voice deepened, he nevertheless could still enjoy a sweaty game of Capture the Flag. He was someone an 11-year old could confide in.

[PICTURE OMITTED]

When Dale turned 18, his Boy Scout days were officially over. But his adult career had just begun—he'd already become an assistant scoutmaster and spent his birthday driving to upstate New York to help run scout camp. Two of his troops in Middletown had folded after aging scoutmasters developed health problems, and by the time he'd settled into Troop 73 in Matawan, Dale understood just how precarious the entire scouting enterprise could be. Without adults willing to volunteer huge amounts of time and energy, a troop could simply vanish overnight. When he entered Rutgers University in the fall of 1988, Dale knew the Boy Scouts desperately needed leaders like him, and he couldn't wait to graduate so he could finally become a scoutmaster himself.

But them something extraordinary happened. At college, he began asking disturbing questions: Why do some people have to live under oppression? Why are others privileged? Why do women earn less than men? Should a woman have the right to choose an abortion? If people can't afford decent medical care, should the government provide it?

Until that moment, Dale and the Boy Scouts had essentially traveled down the same path. Now the road was forking. Dale took a hard left turn, plunging into Amnesty International and the Rutgers Pro-Choice Task Force. He



marched on Washington for women's reproductive rights. He switched his major from economics to communications and instantly regretted his vote for George Bush. He began using politically correct jargon and was careful to refer to girls on campus as "women." Finally, during a long telephone conversation in the early hours of the morning, he made a confession that would change his life forever. He told his friend Sherone that he was gay.

THE BOY SCOUTS HAD REACHED THEIR COMING-OF-AGE moment a couple of decades earlier, during the tumultuous '60s. Unlike Dale, however, the Scouts resisted change. Continuing to emphasize conformity, obedience and devotion to God and country was not exactly cool to a new generation of parents who'd come of age themselves during the '60s. That's one reason scouting lost more than a third of its ranks between 1972 and '79, membership plummeting from an all-time high of 4.9 million to 3.1 million.

The Scouts rebounded during the conservative '80s, becoming the darlings of the right for not caving in to liberals. The national office now claims 4.1 million members, and that number is expected to rise with an increase of boys in the Scouts' target age group. Fifty percent of all boys today between the ages of seven and ten are Cub Scouts, and 20 percent between 11 and 18 are Boy Scouts. Since its inception, scouting has attracted an astonishing 500 million members around the world, including famous Americans from Hank Aaron to Ross Perot, making it the most successful youth movement in history.

But the questions of the '60s remain, and James Dale is not the only Boy Scout in the '90s whose life is being

changed by them. Scouting today is under attack by gays, atheists, civil libertarians, feminists and minorities, and struggling with a range of modern-day issues from sexual molestation to drugs.

The Boy Scouts have made certain concessions to modern life, allowing female scoutmasters, starting troops in the toughest inner-city neighborhoods, trying to reach both girls and boys in public schools through their "Learning for Life" program and revising the Boy Scout handbook to include a special pullout section for parents about drugs and child abuse.

But the Scouts have also stridently resisted other changes they feel would betray their basic mission. Stirring up the most controversy is their "three G's" membership policy: No Gays, No Godless and No Girls. Established at BSA headquarters, which is just outside of Dallas, these rules have been challenged around the country, the cases ranging from the girl suing for admittance to a South Florida troop to twin ten-year old atheists in Southern California fighting their dismissal.

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Excluding gays has proved to be an especially nettlesome problem, especially now that even the U.S. military may soon drop its ban. While the Scouts have always been explicit about being a club for boys with faith in God, their policy against homosexuals has never been stated in the Scout handbook or in training. Meanwhile, an increasingly influential gay rights movement is making the issue a major battleground. The movement has been particularly successful in San Francisco, where a former Eagle Scout named Tim



Curran sued for reinstatement and the United Way of the Bay Area and corporations such as Levi Strauss and Wells Fargo have cut off funding to their local Boy Scout councils.

The debate is surging more discreetly in the Philadelphia area, but no less passionately. Last spring, the Philadelphia Bar Association quietly discontinued its after-school career awareness program with the Scouts' Explorer group because of the anti-gay policy. The bar cites its own internal resolution, passed in July 1991, prohibiting members from discriminating on the basis of sexual orientation. "If it's the policy of the Boy Scouts to discriminate, we have a problem with that," says a bar association source.

Meanwhile, the United Way of Southeastern Pennsylvania continues to donate money to the Philadelphia Boy Scout Council despite a policy that specifically prohibits giving to groups that discriminate against homosexuals (see sidebar on page 87).

By refusing to budge, the Boy Scouts have placed themselves into the middle of perhaps the most emotional component of the gay-rights debate: children. While resistance to gays and lesbians may be declining, many Americans are still uncomfortable with allowing them to supervise their children. A recent *Newsweek* poll found that 83 percent of Americans believe it would be appropriate to hire homosexuals as salespeople, but only 51 percent believe they should be elementary-school teachers.

The Boy Scouts argue that gays do not provide proper role models, and some officials worry privately that their boys may become "converted" to a gay lifestyle. Lurking in the

background is the darker fear of pedophilia, though the Scouts vigorously assert that they make no such connection.

Throughout the tumult, the Boy Scouts contend they are a private organization that can set its own rules. But they've always been much more—a self-described "movement" that seeks to influence millions of boys and set standards for what it means to be an American. That's why, in the story of James Dale and the national battle over traditional values, much more is at stake than just the future of the Boy Scouts.

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WHEN JAMES DALE FINALLY REVEALED HIS HOMOSEXUALITY as a sophomore at Rutgers, he felt like a huge burden had been lifted. "It was like having a nail pulled out of your head and suddenly realizing the pain you've been in," he said. Life, he figured, was too short to waste on lying and hiding. Friends who couldn't handle it were not worth having. Some were shocked, but others said, "Yeah, tell us something we didn't already know."

Dale still earnestly believed in the rules that had been drilled into him since he was eight years old: *A Scout tells the truth. . . . He respects those with ideas and customs that are different from his own. . . . He has the courage to stand for what he thinks is right even if others laugh at him or threaten him.*

The Boy Scouts had also taught him to be a leader. So when he attended meetings of the Rutgers University Lesbian, Gay & Bisexual Alliance, Dale noticed that the male co-president had essentially vacated the position. Since nobody else wanted the job, he ran and was elected. Dale became



deeply involved in gay-rights issues and maintained a high profile on campus.

His quieter gay friends warned him of the homophobic backlash always lurking around the corner. "You're *too* out," they told him. But Dale thought he was invincible in his ivory-tower world, where ideals were supposed to be *lived*, not merely discussed. "Just wait," his friends said. "It's going to hit him."

The following summer, Dale was asked to speak at a conference for social workers, principals and guidance counselors about why gay and lesbian adolescents commit suicide at three to four times the frequency of straight kids. Remembering the self-loathing he carried throughout his own teenage years, Dale agreed to speak. A reporter from the *Newark Star-Ledger* was there, but Dale didn't worry about the publicity. Just a month earlier, he'd finally hurdled the most difficult obstacle by coming out to his parents. His father had tremendous difficulty with the news at first, but eventually accepted it so completely that he later would walk alongside his son at gay-pride marches.

With his parents solidly behind him, Dale had nothing to fear by having his photograph appear in the next day's *Star Ledger*. But soon afterward, he understood what his gay friends had been warning him about. On July 19, 1990—11 days later—the Monmouth County Boy Scout Council sent Dale a letter informing him that his membership in the Boy Scouts had been revoked and asking him to "sever any relations that you may have with the Boy Scouts of America."

Dale wrote back, asking for an explanation, and received this reply a few days later: "The grounds for this membership

revocation are the standards for leadership established by the Boy Scouts of America, which specifically forbid membership to homosexuals." Though he'd never been told of this rule, Dale later discovered that the Boy Scouts contended he had violated his oath to be "morally straight."

On his next trip home, Dale marched into his room, took every bit of Boy Scout paraphernalia—knives, uniform, merit badges, awards, bugle, everything—threw it all into a box and stuffed it into the attic. The gay activist in him wanted to fight them. But the former Boy Scout wanted to erase them from his life forever.

Back at Rutgers that fall, Dale returned to his position as co-president of the Lesbian, Gay & Bisexual Alliance. He convinced himself that his friends in scouting didn't hate him—it was just some stupid rule concocted by some bigots in Texas. And the rule was morally wrong. His expulsion contradicted everything they'd taught him, especially the part about scouting being for *all* boys. With two of his troops having folded—and the third teetering on the brink of collapse—he thought about how much the Scouts needed people like him. Challenging the Boy Scouts would be the best thing that ever happened to them.

For the next year and a half, Dale hunted for a law firm to take his case pro bono. After being rejected several times, it was finally accepted by the Lambda Legal Defense and Education Fund, a gay-rights organization in New York City. Last July, he filed a lawsuit asking the courts to force the Boy Scouts to re-admit him.

No federal laws exist to protect homosexuals from losing their jobs because of sexual preference, but New Jersey



happens to be one of seven states with a statute barring discrimination against gays and lesbians. It was passed by the legislature in January 1991 with little opposition.

Suddenly, James Dale became a national figure in the battle between the Boy Scouts and the modern world. "The Scouts taught me to believe in things with conviction," he told the *New York Times* soon after his suit was filed. "Now, they don't seem to like it so much."

"PEANUUUUUUUUUT! PEANUT BUTTER! JELLY! PEANUUUUUUUUUT! Peanut butter! JELLY!" Twelve little boys stand in a tiny, unventilated room, screaming and laughing their favorite song. All are black. And homeless. Most look healthy, but the boy without front teeth has the emaciated, bony look of a Somalian child.

This Cub Scout pack in the Perkins-Morris Shelter in North Philadelphia places the inherent contradictions of modern scouting on full display. In some ways, though, the scene shows the Boy Scouts at their best. A flexible national structure allows a troop to quickly appear where people are in crisis—here and in the tent cities in South Florida after Hurricane Andrew.

Strangely enough, such public shelters are ideal places to launch a Boy Scout troop. This former nursing home, which opened in 1989 as the city's largest facility for the homeless, fulfills the administrative duties as the sponsoring agency (usually, it's a church). Kenneth Edwards, a social worker on staff, serves as scoutmaster for Cub Scout Pack and Boy Scout Troop 981. And the shelter can recruit kids from a captive village of 70 families, each of which has a separate

room in the building. It's easy for parents to volunteer and drop their kids off.

One drawback is that turnover is high, as families ideally stay here for only three to six months. Edwards, a former Cub Scout himself, hopes the kids will join another troop after they leave, but he also realizes that this scouting experience may be their last. If he does his day job properly, he loses members of his troop—an irony that Edwards doesn't dwell upon.

Without the Boy Scouts, these kids would not be able to take their weeklong camping trip to Treasure Island Scout Reservation, where they swim and shoot bows and arrows. And they'd never be able to build and race miniature cars in the Pinewood Derby. "We use the Boy Scouts as an enhancement to programs that are already here," says Edwards, a gentle, soft-voiced man. "The Boy Scouts provide structure, instill values like cooperation, self-esteem and belief in God. Self-esteem is a big issue. Because they're homeless, they're told to think badly of themselves."

The ideological battles over scouting rules can seem trivial when compared to the brutal conditions of life in the ghetto. None of the boys are wearing uniforms. They've made scouting T-shirts, but wear those only on public occasions. Nobody even notices that a chubby girl is taking part in the activities, breaking a rule that even President Bush has publicly supported.

A young female den leader in a miniskirt, wheeling a baby in a stroller, enters the room and leads the pack in more songs. Three mothers sit quietly to the side clutching their



children, far more concerned about holding a job and finding somewhere to live than about having their boys corrupted by the godless and gay. Edwards has enough to worry about trying to raise money for his troop from people in this building who don't have any.

When the kids start fooling around, Edwards raises his hand in the three-finger Scout salute, the symbol of authority and order. Though it may seem incongruent for a white, conservative organization to come into the ghetto preaching about authority and order to black people stuck at the bottom rung of society, it's actually in keeping with Lord Robert S.S. Baden-Powell's original vision of the Boy Scouts: defenders of the status quo.

Today, the political conservatives who run the Boy Scouts of America insist that adherence to their values leads to self-sufficiency and success, but that's revisionist thinking. Baden-Powell did not have upward mobility in mind when he created the Scout Oath and Law: "If you are discontented with your place or with your neighbors or if you are a rotten brick, you are no good to the wall," Baden-Powell wrote in *Yarns for Boy Scouts* in 1909, "You are rather a danger. If the bricks get quarreling among themselves the wall is liable to split and the whole house to fall."

The house he was trying to preserve was the British empire, whose grip on its colonies around the world was crumbling. Edwardian England was based on the belief that a superior white race was morally justified in using force to bring peace, God and civilization to primitive peoples, and few men embodied that notion better than the Boy Scouts

founder. He fought in Britain's Afghan Wars in 1880 and in later battles against the Zulus, Ashantis and Matabeles in Africa.

Baden-Powell actually based scouting on an innovation he developed during the historic battle of Mafeking during the Boer War, when he used a uniformed cadet corps of boys to serve as messengers, lookouts and orderlies. He miraculously held off 7,000 Dutch settlers with just 700 men, and returned to England a national hero. Soon thereafter, he decided to create a "character factory" that would produce a new generation of men who would end the laziness, bad health and corrupt morals he was convinced were causing the decline of the empire. Following orders was a high priority. "A dull lad who can obey orders," he wrote, "is better than a sharp one who cannot."

The boys in the homeless Cub Scout Pack 981 know nothing about all this, of course. But when Scoutmaster Edwards holds upon the three-finger salute, they suddenly fall silent.

ALL-WHITE SUBURBAN TROOPS LIKE TROOP 155 IN PENN WYNNE ARE more typical, serving as the main stage in the national debate about the Boy Scouts and traditional values. At tonight's meeting, in the auditorium of the picturesque Penn Wynne Presbyterian Church on Haverford Avenue, all the boys are in full uniform—some sporting impressive rows of merit badges on sashes hanging from their belts. They line up and recite the Scout Oath before practicing their marching drills. Survival is an issue for these kids only during camping trips—the troop owns enough gear



to take 70 kids overnight, even though it has only 24 members.

The meeting is led by 16-year-old Life Scout Andy Byers while scoutmaster Richard Martin, a tall, grandfatherly man with a ruddy face and white hair, handles paperwork and whispers to three assistant scoutmasters. The boys fidget during Byers' lecture on civic duty until it's time for a dodgeball game they call bombardment, when the room turns into pandemonium, the boys shrieking and frenetically trying to duck the fat rubber ball.

Off to the side, Martin says that during next weekend's camping trip his boys will bring a handicapped troop to the beach at Cape May. "They can't get onto the beach in their wheelchairs," he says, "so we figured out a way to take snow fences, these wooden slats, and lay them out on the beach through the soft sand."

Martin has also decided to break precedent and bring a Girl Scout troop along. "This 12-year-old girl—maybe she has some glitches on her face, but she's still capable of doing some of the things a boy is capable of," he says. "The only structure these young boys and young girls have is the school yard. That can be pretty wicked. He can't show any respect for girls because the other boys call her a knucklehead or whatever. I can't change the world, but I can affect how these young boys look at things."

Standing next to him is assistant scoutmaster Kerry Sherin, another leap into the modern world for the Boy Scouts. She's wearing a scouting dress and looking after her two-year-old son. The organization finally made its

concession to the women's movement in 1988, when they allowed female scoutmasters. "My husband wouldn't be caught dead in a tent, never mind the bugs," she laughs. "So he says, 'Go ahead, have fun!"

Camping with girls and permitting female scoutmasters are enormous changes for an organization that has always believed the backwoods represents a boys-only retreat from the complexities of modern life. Baden-Powell's genius was understanding the deep yearning for outdoor adventure that boys would have in an increasingly urban and industrial society. While that hasn't changed—boys still consider camping the best part about scouting—the social climate of turn-of-the-century England bears little resemblance to that of the 20th-century America Baden-Powell's creation is struggling so hard to adapt to.

The boys in Troop 155, for example, have to contend with enormous social pressure to drop out of scouting by the time they reach high school. Sitting around after their meeting, they're asked why there aren't more older kids in this troop.

"Because it's kind of gay," says Chris, a 14-year-old. This is his last meeting, because he's losing interest and is tired of getting teased in school.

"If you're a scout, that means you're a wimp or a geek," says another.

"Yeah, they say, 'Fags go out on camping trips together, cook food, sleep in a tent together'."

Several kids asked that their names not be published because they were worried about being harassed at school.



One even thought he'd get beaten up, because his older brother, an Eagle Scout, had gotten jumped from behind after his name appeared in a story about scouting.

This homophobia reflects a cruel irony—if you're a Boy Scout, your friends will ridicule you for being a homosexual. But if you really are gay, the Boy Scouts can kick you out.

Scouting officials argue privately that the gay issue is virtually nonexistent for most Boy Scouts. No boy has ever been expelled for being gay, and scoutmasters are usually sensitive on those rare occasions when a boy brings up the subject. All five lawsuits, they point out, including James Dale's, have been filed by gay adults, four of whom were already—or wanted to become—Scoutmasters.

But Ken McPherson of Forgotten Scouts, a camp of primarily gay former Boy Scouts formed recently in San Francisco, says his organization is considering bringing forward one or more gay scouts, with the complete support of their parents, to challenge the Scouts' anti-gay rule. He says there are many gays throughout the scouting organization—from boys to scoutmasters to council executives—who are faced with the choice of violating their oath of honesty or being expelled. "This is not about whether it's okay to be gay," says McPherson. "The Boy Scouts have a problem with people telling the truth."

If McPherson is to be believed, the boys in Troop 155 actually have a salient point—there may be more gays in scouting than in society at large. Fully 50 percent of all gay men in the San Francisco Bay area were once Boy Scouts, McPherson estimates. "Some of us consciously knew we

were gay and wanted to do masculine things as a cover," he says. "Others just wanted to be around boys—not on a sexual basis, but a social basis."

Homosexuals tend to be exemplary scouts, he says. More than half of the 1,000 members of Forgotten Scouts had achieved Eagle Scout, which only about 3 percent of all scouts attain. "There are so many Eagle Scouts," he says, "because we're trying to prove we're man enough."

In other words, there may be many exemplary gay scouts hoping to take the next step to scoutmaster. National BSA spokesman Blake Lewis declines to estimate how many gays there might be among scouting's 1.2 million volunteers and 3,700 professional staff members, or among the 1 million Boy Scouts scattered over 51,000 troops and 2.1 million Cub Scouts in nearly 53,000 packs. In the general population, the number of homosexuals is usually estimated at 10 percent.

Scouting officials become extremely squeamish when the subject of gays comes up. Richard Marion, the Philadelphia Scout Council executive, refused to even say the word "gay" during a recent interview, answering a question by pointing at the tape recorder and mouthing the words "Turn that thing off!" He referred all questions on the subject to Lewis.

"We've never denigrated the rights of these people to have their own values and viewpoints," says Lewis, who works for Edelman Worldwide, the Chicago public-relations firm that the Boy Scouts pay about $178,000 a year to run a regular spin-control office at BSA headquarters in Texas. "We've merely said these are our values and standards, and they are what families expect from the BSA. We do not



believe homosexuals provide role models that are consistent with the expectations of mainstream American families."

Middle America, however, seems deeply ambivalent on this issue. In the *Newsweek* poll, published last September, 78 percent of the respondents thought homosexuals should have equal rights in job opportunities, but 53 percent did not believe homosexuality was an acceptable alternative lifestyle. Boy Scouts officials say privately that their entire structure, which is based on troops sponsored by church groups and community leaders, could fall apart if they began admitting gays. The Catholic and Mormon churches, in particular, are outspoken against homosexuality.

Conservatives also fear that gay scoutmasters would try to "convert" boys. Like Dan Quayle, they cling to the old-fashioned view that homosexuality is a matter of choice, not an orientation one is simply born with, like heterosexuality.

Discussed less openly is the fear that gays may be pedophiles, which enrages gay activists. "For society to use gays as scapegoats for sexual child abuse is more denial," says McPherson of Forgotten Scouts, "and we're not going to take it."

The Boy Scouts have had serious problems with sexual molestation for some time. An investigation by the *Washington Times* in 1991 showed that, in the last 19 years, at least 1,151 scouts nationwide have reported being abused by their leaders, an average of more than one a week. Locally, former Northeast Philadelphia scoutmaster William J. Fried was convicted last August of sexually assaulting a 12-year-old boy during two camping trips in 1989.

After years of denying that the problem exists, the Scouts have acknowledged that their organization "provides a natural hunting ground for pedophiles" and toughened their screening process, enforced more strictly the requirement that two adult leaders be present on all camping trips, and outlawed private, one-on-one activities between adult leaders and scouts. Their sex-abuse education program, including a video for boys on how to recognize a sexual advance, is considered among the best in the nation by some experts in the field.

The BSA is careful not to publicly draw any connection between its policy against gays and its problem with pedophiles. "Some people assume that we do not allow homosexuals because of concern for child abuse," says Lewis. "They're two totally separate issues. Child abuse is a matter of protection of young people. Homosexuality is a question of our values."

In fact, the "Youth Protection Guidelines" distributed to Boy Scouts leaders is quite explicit on this issue, calling it a myth that "children are at greater risk of sexual victimization from gay adults than from straight adults." Some studies contend that most child abusers are heterosexual and that pedophilia appears to be an entirely separate sexual orientation, unrelated to the adult preference of the abuser.

This sensitive area seems to be one of the few issues that the Boy Scouts and gay activists agree on. But the connection nevertheless persists, perhaps for one rather shocking reason: Some historians who have studied the life of Baden-Powell believe that the Boy Scouts founder was both a repressed homosexual and pedophile.



At the least, Baden-Powell had some rather odd ideas about sex. According to Tim Jeal, author of *The Boy-Man: The Life of Lord Baden-Powell*, Baden-Powell preached to boys that thinking about sex with women was "dirty" and sneered at boys who paired with girls as having a disease he called "girlitis." He warned in one advice book that sexual desire seizes boys for only a few months, and then they "get over it just as they would get over the measles." Baden-Powell didn't marry until the age of 55, and after doing what he considered his "duty" of siring three children, stopped sleeping with his wife altogether.

Baden-Powell's biographers have argued over whether he ever consummated his close lifetime relationship with colleague Major Kenneth McLaren. But most agree that his writings clearly show a repressed homosexual who lived at a time when such a disclosure, especially in the military, often resulted in suicide.

The charge of pedophilia emerges in part from Baden-Powell's diary entries, on microfilm at Boy Scouts headquarters; one entry reads: "Tod's photos of naked boys and trees are excellent." He wrote a letter to the same A.H. Tod asking if "possibly I might get a further look at those wonderful photographs of yours." His other writings, coupled with observations from those who knew him, indicate that Baden-Powell was enchanted by boys and their physiques.

Nobody claims Baden-Powell ever had sex with children, and Jeal argues that by channeling his affection for boys into the creation of scouting, he accomplished something very positive and important. But at least one Boy Scouts official has conceded publicly that, by today's standards, Baden-

Powell's obsessions would have marked him as a potential child molester and gotten him thrown out.

JAMES DALE SITS ON A BED IN A SMALL dorm room at Rutgers University with about a dozen friends. They're taking turns reading aloud from an article about the Stonewall riots in Greenwich Village in 1969, the birth of the modern gay-rights movement. It's a weekly meeting of a group of gay and lesbian students who live in a wing of Demarest Hall. Soon they begin debating the merits of medical research into whether there is a biological basis for homosexuality.

"Why look at this in terms of homosexuality?" says Robert Zamitis, who sits on the floor wearing denim shorts, a Minnie Mouse T-shirt and high-laced combat boots. His hair is a crewcut except in the front, where it's teased up into a stiff curl, like a overhanging roof. His manner is so classically gay—soft, sibilant voice, hands flitting about his face and neck—that his friends sometimes tease him about it. "I'd like to discover the causes of heterosexuality!" he cries. "What if homosexuality is the norm? Maybe we're among the privileged few."

Everybody laughs. "That's right," says Dale. "In ancient Greece, it was considered divine love."

Lounging on the bed among his friends, Dale loses some of the stiff body language he learned in the Boy Scouts and military school. As he tucks his knees up to his chin, his whole body relaxes and his manly affectations fade. "In some cultures, people were not defined by what kind of sex they had, because everybody did both," he says. "You want natural, *that's* natural."



About to graduate from college, James Dale has finally grown up. Now he's able to have the kind of intellectual discussions he never had in the Boys Scouts. Lord Baden-Powell didn't have much patience for such claptrap, and neither does the current leadership. But Dale and the shifting mores of modern society are forcing the Boy Scouts to consider some uncomfortable new questions, especially this one: How long can they cling to Baden-Powell's curious dream of keeping boys out in the pristine forest, away from modern civilization, adolescent forever?

## SCOUTMASTER'S HANDBOOK
(excerpts)

[PICTURES OMITTED]

## THE SCOUT OATH OR PROMISE

On my honor

I will do my best

To do my duty to God
and my country and

To obey the Scout Law;

To help other people at
all times;

To keep myself physically
strong,

Mentally awake, and
morally straight.

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**4. Adult Male Association**

You may not think of yourself as a "method." Yet your role as friend, coach, and counselor to Scouts is one of the most valuable parts of the program.

In his quest for manhood, every boy needs contact with men he can copy. Living, breathing men provide models of what manhood is like. Boys copy whatever models are available to them. Not all of these are really good models. So just by doing things and talking with Scouts, you are carrying out one of the methods of Scouting. You are providing a good example of what a man should be like. What you do and what you are may be worth a thousand lectures and sermons.

* * * *

**9. Sharing Leadership.—**

With leadership goes responsibility. You can and must learn to share your leadership, but you never give up the final responsibility for the welfare of your troop. The secret lies in realizing that you can let others share in making decisions without giving up your final responsibility.

**10. Setting the Example.—**

This is fairly obvious to any Scoutmaster. What you are speaks louder than what you say. This ranges from simple things like wearing the uniform to the matter of your behavior as an individual. Boys need a model to copy and you might be the only good example they know.

**11. Managing Learning.—**

This may be a new term, but Scoutmasters have done this since 1910. The only difference is that today we are warning Scoutmasters not to assume that boys have learned just because we have done some teaching. The proof lies in what they can do. If they can do something, then you have successfully taught it. The trick is to actively involve boys in the learning process by giving them choices as to what they can learn, and by checking constantly to see what they can do. Find out what Scouts know, put them in a situation where they see the need for some knowledge, and then offer them the help they need to meet the situation they face. The idea is to put the emphasis on the needs of the learner instead of concentrating solely on what the instructor does.

Fuller descriptions, in boys' language, are contained in *Patrol and Troop Leadership*. These skills are also learned in special boy leadership courses put on by local councils.

* * * *

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**Lack of Parental Guidance**

Some of your Scouts may not have either parent at home, and are being brought up by others. Some may have only one, having lost the other by death, divorce, or separation. Boys live with alcoholism, infidelity, greed, stupidity, and about any other kind of poor influence you may be able to think of. The home they come from usually shows, somehow, in what they are and do. In such situations, Scouting offers



some of what is missing at home. The Scouting influence rises to its fullest height when this happens.

It is impossible even to speculate on the many ways in which the troop and its leaders may substitute for parental guidance. It may be a matter of table manners. It may be some of the problems we have noted earlier: drugs, swearing, smoking, etc. A boy without proper parental guidance may be handicapped in dozens of different ways. He needs your interest and attention.

**Inattention**

It is typical of boys of the younger Scouting years to be rather weak on paying attention. This suggests some rules for you and other leaders.

- Don't talk until you have boys' attention. They can't take in two things at once.
- Keep activities in meetings short. As a general rule, no activity should go beyond 20 minutes, to guard against overrunning the attention span of younger boys.
- Keep distractions out or at least down.

**Sex Curiosity**

In the age span covered by the Scouting program, boys discover sex as one of the realities of living. They are naturally curious about it, and they may have limited opportunity to find out about it.

It seems to be general belief that boys should learn of sex and family life at home, from their parents. While there are few objections to this principle, it is not borne out in fact that this teaching actually occurs.

You must respect the right of parents to teach their sons about life. You must also recognize that

[PICTURE OMITTED]

many of them will not do this very well, and some won't do it at all. Some of their failings will come to light in your troop.

You may find magazines at practically any level of obscenity being circulated during a camp-out.

You may have boys asking you for information or advice about sexual matters.

You may overhear dirty stories or dirty talk, both informed and uniformed, in the troop.

You may discover or hear about incidents of sexual experimentation among troop members.

How should you handle such matters?

**Rule number 1**: You do not undertake to instruct Scouts, in any formalized manner, in the subject of sex and family life. The reasons are that it is not construed to be Scouting's proper area, and that you are probably not well qualified to do this.

**Rule number 2**: If Scouts come to you to ask questions or to seek advice, you would give it within your competence. A boy who appears to be asking about sexual intercourse, however, may really only be worried about his pimples, so it is well to find out just what information is needed.

**Rule number 3**: You should refer boys with sexual problems to persons better qualified than you to handle them. If the boy has a spiritual leader or a doctor who can deal with them, he



should go there. If such persons are not available, you may just have to do the best you can. But don't try to play a highly professional role. And at the other extreme, avoid passing the buck.

And now how about some of the questions we raised?

Publications that you judge unacceptable should be removed from the scene, and those who brought them told that you don't want them around, and why.

Incidents of sexual experimentation that may occur in the troop could run from the innocent to the scandalous. They call for a private and thorough investigation, and frank discussion with those involved. It is important to distinguish between youthful acts of innocence, and the practices of a confirmed homosexual who may be using his Scouting association to make contacts. A boy of 15 or so cannot be assumed to be acting out of innocence, and should be separated from the troop for the protection of younger boys.

It is of greatest importance that such occasions be kept quiet. Avoid accusations and any loose talk. Avoid making a small and innocent act into a mammoth offense.

* * * *

The Seattle Times

July 10, 1992, Friday, Final Edition

HEADLINE: EXPELLED SCOUT IS TAKING LESSONS TO HEART

BYLINE: BY CAROL M. OSTROM

BODY

James Dale thought he was being a good Boy Scout when he spoke out at a conference on adolescent suicide.

"I was doing exactly what the Boy Scouts taught me," said Dale. "I was standing up for what I believed in, being true to myself."

The problem was that James Dale, 20, was not only an Eagle Scout and the recipient of a roomful of top awards, including the Order of the Arrow - he was also gay. And he talked about it. In public. In front of reporters.

Before he could say "merit badge," the Boy Scouts had contacted him. The message: You're out. Period.

Dale, a student at Rutgers University in New Jersey who was then an assistant scoutmaster, was crushed.

He'd been a Scout for 12 years, following the footsteps of his brother and his father. Until the past few years, he hadn't even known for sure he was gay.

He went home, gathered up his knives, bugles, badges and threw everything into a box. "I went through denial," he recalls. "I didn't want anything to do with them.



"I put everything in a box and tried to close that door in my life, to mentally block it out."

But after a while he started thinking. He had friends in the Scouts who knew he was gay and were supportive. He missed the camping trips, the camaraderie.

"The years in the Boy Scouts were the best years of life," he said. "I was accepted; I was rewarded. It was very reaffirming of myself and my identity."

Dale, now 21, was contacted at the San Francisco office of the Forgotten Scouts, an organization of some 1,000 former Scouts, most openly gay, who seek to pressure the Boy Scouts of America to change its policy.

One of the organization's three co-founders is William Boyce Mueller, the grandson of William Dickson Boyce, the founder of the Boy Scouts of America.

Because the Boy Scouts in New Jersey refused to even hear his case, Dale is strongly considering filing suit under that state's non-discrimination law.

He laments the controversy, but places the blame squarely at the feet of the Boy Scouts.

"They're turning the Boy Scouts into a political circus," said Dale, a sociology and theater-arts major at Rutgers. "It's not about sexuality. It's about giving adolescent boys a role model. And you can't close out 10 percent of the population.

"I want to be able to go back in there and be who I am. I want to be able to give to other kids what I took out of the organization."

What the Scouts taught him most of all, he says, is to be a leader.

"What is core about me is standing up for what I believe in," Dale said. "I take that right out of the Boy Scout handbook . . . . They taught me to be a leader, and that's what I'm doing now."



United Press International

April 30, 1981, Tuesday, AM cycle

BYLINE: By DOUGLAS DOWIE

LEAD: An Eagle Scout who was featured in a newspaper story on gay youth filed a $520,000 discrimination suit Thursday charging the Boy Scouts of America kicked him out because of his open homosexuality.

BODY

An Eagle Scout who was featured in a newspaper story on gay youth filed a $520,000 discrimination suit Thursday charging the Boy Scouts of America kicked him out because of his open homosexuality.

Timothy Curran, 19, with the assistance of the American Civil Liberties Union and National Gay Task Force, filed the suit seeking $500,000 punitive damages and $20,000 actual damages against the Mt. Diablo Council of the Boy Scouts in the San Francisco Bay Area.

"What's ridiculous," Curran said in an interview, "is that the Boy Scouts are saying that because I am homosexual, I am immoral.

"I think that's absurd. I am not an immoral person."

ACLU attorney Susan McGreivy said Curran, a journalism major at UCLA, was kicked out of the Boy Scouts after a series of articles on gay youth in Bay Area appeared last June in the Oakland Tribune-Eastbay Today.

The articles, which were accompanied by a photograph of Curran attending the Skyline High School senior prom with a male date, quoted his belief that going to the dance as an open homosexual was a "political statement."

Ms. McGreivy said the Boy Scouts have taken an unconstitutional position that Curran is "per se immoral" because he is homosexual.

"Timothy has an outstanding track record as a young Scout," Ms. McGreivy said.

"He founded a Scout troop for the deaf in Oakland and was heartbroken when the Boy Scouts kicked him out and refused to allow him to attend the National Jamboree in Virginia."

Dave Park, Boy Scout general counsel at the organization's national headquarters in Dallas, said Curran had applied for re-registration as a "Scouter," an adult leader, and was refused because "he is an avowed homosexual."

"We feel homosexuality and membership in scouting are not compatible," Park said. "We feel we have the right to determine our own criteria for membership."

Curran said he had no trouble functioning as both a Scout and an open homosexual for three years before he was forced out of his troop.

"I was annoyed, to say the very least," he said. "I felt that my rights had been abridged. I felt like I'd been hit in the face."

Curran said he joined the Boy Scouts in 1975.



"I have enjoyed being a Boy Scout," he said. "I made a lot of friends, I gained a lot of skills and it was very beneficial for me.

"I thought that it was ridiculous of these people who knew my record, who knew that I was a good Scout, to say that simply because I was a homosexual -- and for no other reason -- that I was going to be kicked out."

United Press International

July 7, 1981, Tuesday, AM cycle

HEADLINE: Homosexual loses bid to become Scout leader

Gayscout

A Superior Court judge turned down a request Tuesday from a teenage homosexual to force the Boy Scouts of America to allow him to become an adult troop leader.

Judge Robert Weil ruled the Boy Scouts is a voluntary, private organization, which does not have to allow Timothy Curran, 19, of Oakland, to become a "Scouter," or adult leader.

Curran, a former Eagle Scout who took a male date to his high school prom last year, said he was "disappointed, but not distressed" with the decision.

"I'm not the sort of person who gives up after a skirmish," he said.

Curran asserted in his suit that Mt. Diablo Council of the Boy Scouts in Berkeley unconstitutionally denied his membership in the organization solely because he is homosexual.

Curran said Boy Scouts executives had told him "homosexuals do not set good moral standards to be emulated by younger Scouts."

The Boy Scouts denied Curran membership a short time after the Oakland Tribune featured the teenager in an article



about the gay youth movement and published a photograph of Curran escorting his male date to the prom.

Attorney George Slaff, who represented Curran, said he may appeal the decision.

"Nothing in the rules states homosexuals may not be members," Slaff said.
Boy Scout leaders said when Curran filed the suit that the organization has the constitutional right to define its membership standards.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY

[CAPTION OMITTED]

AFFIDAVIT OF REVEREND GEORGE WAYNE FREYBERGER IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

STATE OF NEW JERSEY )
) ss.
COUNTY OF ESSEX )

REVEREND GEORGE WAYNE FREYBERGER, being duly sworn, deposes and says:

1. I reside in Essex County, New Jersey. I make this Affidavit in support of plaintiff James Dale's motion for summary judgment. I have personal knowledge of the facts set forth herein.

2. I am a Lutheran Pastor and am currently the Dean of Students at Upsala College, a Lutheran college in East Orange, New Jersey. I received a Bachelor of Arts degree in History from Muhlenberg College, a Lutheran college in Allentown, Pennsylvania, in 1958, and a Master of Divinity degree from the Lutheran Theological Seminary in Philadelphia, Pennsylvania in 1962. I was ordained a Lutheran Pastor in the United Lutheran Church in America (the "United Lutheran Church") in 1962. For fifteen years following my ordination, I served as a pastor at Lutheran parishes in Tom's River, Newark and Teaneck, New Jersey.



In 1977, I became chaplain at Upsala College and, since 1990, have been its Dean of Students.

3. Some time after my ordination, the United Lutheran Church became, by way of merger with other Lutheran church bodies, the Lutheran Church in America (the "Lutheran Church"). The foregoing event represented essentially only a name change as there was general theological and biblical agreement involved in the merger. In 1988, the Lutheran Church joined with the American Lutheran Church and the Association of Evangelical Lutheran Churches to form the Evangelical Lutheran Church in America (the "Evangelical Lutheran Church"), the largest Lutheran body in the United States. Policy statements of each of the Evangelical Lutheran Church's three predecessor bodies which have not been specifically repudiated by the Evangelical Lutheran Church remain valid Lutheran teachings and interpretations of scripture for Evangelical Lutheran Church members. Although policy statements of the Evangelical Lutheran Church are only guides, and it is possible for individuals to disagree with church policies, policy statements of the Evangelical Lutheran Church are widely subscribed to by members of the Evangelical Lutheran Church and reflect the views of the vast majority of its members.

4. The Evangelical Lutheran Church and its predecessor bodies have been active sponsors of units of Boy Scouts of America ("BSA") in New Jersey. Lutheran churches in New Jersey currently sponsor more than 50 Boy Scout troops. In fact, James Dale was for several years a member of BSA Troop 220, which was sponsored by King of Kings Lutheran Church, Middletown, New Jersey.

5. On the basis of the teachings of the Evangelical Lutheran Church, a Lutheran should not conclude that lesbians or gay men are immoral or unclean because of their sexual orientation. This conclusion comports with the Lutheran belief that all persons, regardless of their sexuality, are born with "original sin" and must seek out God's redemption. Lesbians and gay men are at no disadvantage, as a result of their sexual orientation, in seeking God's redemption. Members of the Evangelical Lutheran Church, including those who are also members of BSA, are not taught by their religion to equate homosexuals with "immorality" or "uncleanliness."

6. Bishop Stanley E. Olson, a retired bishop of the Evangelical Lutheran Church who served for 39 years in the ordained ministry, stated the following when asked whether, in his opinion, God regards homosexuality as a sin:

> Of course not. . . . God made all of us and did not make all of us alike. Diversity is beautiful in creation. How we live our lives in either affirming or destructive ways is God's concern, but being either homosexually oriented or heterosexually oriented is neither a divine plus or minus.

Like Bishop Olson, I believe that the morality of sexual behavior is appropriately judged by considering whether a person engages in such behavior as an expression of a committed love or in a destructive or exploitative fashion. I do not believe that a person's sexual orientation is relevant to that judgment.

7. A recently distributed draft of an Evangelical Lutheran Church Social Statement entitled "The Church and



Human Sexuality: A Lutheran Perspective" affirms that we as Lutherans do not view homosexuality as immoral or unclean. A true and correct copy of the 1993 Social Statement (the "Statement"), prepared by a 17-member Task Force of the Division for Church in Society of the Evangelical Lutheran Church (the "Task Force"), is attached to this Affidavit as Exhibit A. In the Statement, the Task Force states clearly that "[s]exual orientation should not become the basis for judging a person's overall character. We must challenge stereotypes that do not fit gay or lesbian Christians who seek faithfully to live out their baptismal vocation." Ex. A at 12. The Task Force also makes clear that "[d]isowning a relative or a friend because of their sexual orientation is morally unacceptable." Id. (emphasis added). BSA's policy of discrimination against homosexuals, by adopting sexual orientation as the sole basis for judging a person's overall character and by disowning those BSA members who are homosexual, is in clear contradiction of the Lutheran values expressed by the Task Force.

8. In 1991, Bishop E. Roy Riley, Jr. of the New Jersey Synod of the Evangelical Lutheran Church, the Lutheran Office of Governmental Ministry in New Jersey (the "LOGM/NJ") and the Synod Council (the "Synod Council") of the New Jersey Synod of the Evangelical Lutheran Church lent their support to passage of Bill A-634, which, as passed, amends the New Jersey Law Against Discrimination (the "NJLAD") to prohibit discrimination on the basis of sexual orientation in public accommodations. Attached to this Affidavit as Exhibit B is a true and correct copy of a letter sent by the LOGM/NJ to New Jersey state legislators urging their support of Bill A-634. Attached to this Affidavit as

Exhibit C is a true and correct copy of a resolution adopted by the Synod Council, declaring its support for the revision of the NJLAD to prohibit discrimination on the basis of sexual orientation.

9. The Evangelical Lutheran Church's condemnation of discrimination on the basis of sexual orientation was clearly expressed earlier this year in a resolution of the Church Council of the Evangelical Lutheran Church (the "Council"). A true and correct copy of the Council's resolution dated March 27-29, 1993 (the "Resolution") is attached to this Affidavit as Exhibit D. The Resolution "reaffirm[ed] that the historical position of the Evangelical Lutheran Church in America is . . . support for legislation, referendums, and policies to protect the civil rights of all persons, regardless of their sexual orientation, and to prohibit discrimination in housing, employment, and public services and accommodations." Exhibit D.

10. As support for the Resolution, the Council cited policy statements of two of the Evangelical Lutheran Church's predecessor bodies, each of which condemned in strong tones discrimination on the basis of sexual orientation. Specifically, the 1970 statement of the Lutheran Church entitled "Sex, Marriage, and Family" recognized that lesbians and gay men "are often the special and undeserving victims of prejudice and discrimination in law, law enforcement, cultural mores, and congregational life" and concluded that "[i]t is essential to see such persons as entitled to understanding and justice in church and community." Exhibit D. A 1980 statement of the American Lutheran Church entitled "Human Sexuality and Sexual Behavior" declared that Christians "need to take leadership roles in changing public opinion,



civil laws, and prevailing practices that deny justice and opportunity to any persons, homosexual or heterosexual" and urged concern for "laws that foster justice, mercy, equality of opportunity, and the protection of basic human rights." Exhibit D.

11. As a minister, I reject the notion put forth by BSA that homosexuals cannot constitute appropriate role models for young people. Sexual orientation is simply an irrelevant consideration in this regard.

12. As the statements in this Affidavit attest, the Lutheran religion does not believe that homosexuals are immoral or unclean.

/s/ The Rev. George Wayne Freyberger
Reverend George Wayne Freyberger

Sworn to before me this
3 day of January, 1994

/s/ Anita L. Leake
Notary Public

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY

[CAPTION OMITTED]

AFFIDAVIT OF REVEREND RICHARD GIFFEN IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

STATE OF NEW JERSEY )
) ss.
COUNTY OF UNION )

REVEREND RICHARD K. GIFFEN, being duly sworn, deposes and says:

1. I am Executive Presbyter of the Presbytery of Elizabeth. I reside in Middlesex county in the State of New Jersey. I make this Affidavit in support of plaintiff James Dale's motion for summary judgment. I have personal knowledge of the facts set forth herein.

2. I graduated from Muskingum College in Ohio and received my Master of Divinity, Master of Theology and Doctor of Ministry degrees from Pittsburgh Theological Seminary. I also received a Master of Education degree from the University of Pittsburgh. I served as pastor of four congregations before being appointed 12 years ago to my present position as the chief administrative officer of the Presbytery of Elizabeth. As Executive Presbyter of the Presbytery of Elizabeth, I am responsible for 51 New Jersey congregations with 21,000 members. Additionally, I preach on most Sundays to one of those 51 congregations.



3. BSA's discrimination against homosexuals is inconsistent with the well-established condemnation by the Presbyterian Church (U.S.A.) (the "Presbyterian Church"), and its predecessor bodies, the Presbyterian Church (U.S.) and the United Presbyterian Church in the U.S.A., of discrimination on the basis of sexual orientation. Specifically, the General Assembly, which is the national governing body of the Presbyterian Church, has repeatedly called upon Presbyterians to work for the elimination of discrimination against homosexuals. As early as 1977, and again in 1978, the 117th and 118th General Assemblies of the Presbyterian Church (U.S.), respectively, asserted "the need for the church to stand for the just treatment of homosexual persons in our society in regard to their civil liberties, equal rights and protection under the law from social and economic discrimination which is due all its citizens."

4. In 1979, the 119th General Assembly of the Presbyterian Church (U.S.) (the "119th General Assembly") proclaimed as follows:

> The Christian community can neither condone nor participate in the widespread contempt for homosexual persons that prevails in our general culture. Indeed, beyond this, it must do everything in its power to prevent society from continuing to hate, harass, and oppress them.

Elsewhere in the Statement, the 119th General Assembly affirmed that:

> Persons who manifest homosexual behavior must be treated with the profound respect and pastoral tenderness due all people of God. There can be no

> place within the Christian faith for the response to homosexual persons of mingled contempt, hatred, and fear that is called homophobia.

BSA's discrimination against homosexuals fails to accord such persons the respect recognized by the Presbyterian Church as "due all people of God."

5. In 1978, the 190th General Assembly of the United Presbyterian Church in the U.S.A. (the "190th General Assembly") called "on United Presbyterians to reject in their own lives, and to challenge in others, the sin of homophobia . . ."

6. The 190th General Assembly stated that "[t]here is no legal, social, or moral justification for denying homosexual persons access to the basic requirements of human social existence" and, even more significantly, proclaimed the following:

> Vigilance must be exercised to oppose federal, state, and local legislation that discriminates against persons on the basis of sexual orientation and to initiate and support federal, state, or local legislation that prohibits discrimination against persons on the basis of sexual orientation in employment, housing, and public accommodations.

To this end, the 190th General Assembly called "upon United Presbyterians to work for the passage of laws that prohibit discrimination in the areas of employment, housing, and public accommodations based on the sexual orientation of a person."

7. In 1991, numerous Presbyterian ministers wrote letters to New Jersey legislators supporting the amendment of



the Law Against Discrimination to prohibit discrimination on the basis of sexual orientation.

8. In 1992, the 204th General Assembly (the "204th General Assembly") of the Presbyterian Church, meeting in Wisconsin, passed a "Commissioner Resolution in Support of [Presbyterian Church] Policy as Reflected in the New Jersey Law Against Discrimination" (the "Resolution"). The Resolution responded to the action of the Orthodox Presbyterian Church, a denomination of only 12,000 members nationwide which separated from the Presbyterian Church in the 1930s, in bringing a lawsuit claiming that the New Jersey Law Against Discrimination, as amended to prohibit discrimination on the basis of sexual orientation, was unconstitutional and denied their right to discriminate against homosexuals. In the Resolution, the 204th General Assembly resolved to "declare its support for the New Jersey Law Against Discrimination, as amended" to prohibit discrimination on the basis of sexual orientation.

9. I concur with the recent statement of Reverend Dr. George R. Edwards that "God does not regard homosexuality as a sin any more than heterosexuality. Sin is lack of respect or love for God; it is lack of love or respect for other persons." (Reverend Dr. Edwards is Professor Emeritus of New Testament Theology at Louisville Presbyterian Theological Seminary, where he taught between 1958 and 1985, and a member of the Society of Biblical Literature). As a minister, I do not believe that homosexuality is a sin. Rather, I believe that sin comes from what individuals, whether heterosexual or homosexual, do with their sexuality. Thus, as a Presbyterian minister, I reject the notion that homosexuals are "immoral" or "unclean."

10. I further reject the suggestion of BSA that homosexuals cannot constitute appropriate role models for young people. I believe that the question of whether an individual is an appropriate role model for young people depends on whether that individual, in their words and their actions, teaches a lesson of love, responsibility, respect and decency, not whether that person happens to be heterosexual or homosexual.

11. The Presbyterian Church has been and continues to be a significant supporter of BSA on a national basis. It is my understanding, based upon the list of BSA chartering organizations in New Jersey produced to plaintiff by defendants during the discovery phase of this lawsuit, that over 180 BSA troops in New Jersey are sponsored by Presbyterian Church parishes. That support is founded on the Presbyterian Church's admiration of BSA's general commitment to values such as reverence, personal integrity, and tolerance. Those same values, however, are compromised by BSA's policy of discrimination against homosexuals.

/s/ Rev. Richard K. Giffen
Reverend Richard K. Giffen

Sworn to before me this
4th day of January, 1994

/s/ Maria B. Rodriguez
Notary Public



SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY

[CAPTION OMITTED]

AFFIDAVIT OF BISHOP THOMAS GUMBLETON IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

STATE OF MICHIGAN )
) ss.
COUNTY OF WAYNE )

BISHOP THOMAS GUMBLETON, being duly sworn, deposes and says:

1. I am Auxiliary Bishop of the Roman Catholic Diocese of Detroit. I reside in Wayne County in the State of Michigan. I make this affidavit in support of plaintiff James Dale's motion for summary judgment. I have personal knowledge of the facts set forth herein.

2. I am a graduate of Sacred Heart Seminary and have been Auxiliary Bishop of the Roman Catholic Diocese of Detroit since 1978. I also serve as pastor of an inner-city parish in Detroit and as Vicar General of the Archdiocese of Detroit.

3. As a youth, I was a member of Boy Scouts of America ("BSA") Troop #259, which was sponsored by Epiphany Church in Detroit. I was the first member of Troop #259 to achieve the status of Eagle Scout.

4. It is true that the Catholic Church in Rome presently views homosexual activity as immoral.* However, as recognized some ten years ago by the Washington State Catholic Conference, "prejudice against homosexuals is a greater infringement of the norm of Christian morality than is homosexual . . . activity." Statement of Washington State Catholic Conference, a true and correct copy of which is attached to this Affidavit as Exhibit A.

5. Catholics in the United States have repeatedly condemned the injustice and immorality of discrimination against individuals on the basis of their sexual orientation. In fact, a Gallup poll conducted in 1992 showed that U.S. Catholics overwhelmingly support civil rights for lesbians and gay men in the area of employment (78% support with a margin of error of plus or minus 4%). A true and correct copy of the 1992 Gallup Poll is attached to this Affidavit as Exhibit B. This finding is not surprising in light of the numerous instances in which Catholic leaders, including individual

* It is also true that the teachings of Rome regarding the morality of homosexual activity are not classified among the "infallible" teachings of the Church and thus, like the teachings of the Church in past centuries regarding, e.g., slavery and separation of church and state, they may one day be recognized as false. The importance of this fact, for present purposes, is that rejecting the current teachings of the Vatican regarding the morality of homosexual behavior does not disqualify one from being considered a Catholic in good standing.



bishops and state conferences of bishops, have condemned discrimination against homosexuals on the basis of their sexual orientation.

6. For example, as early as 1976, the National Conference of Catholic Bishops (the "National Conference") stated that "[h]omosexuals . . . should not suffer prejudice against their basic human rights. They have a right to respect, friendship and justice. They should have an active role in the Christian community." 1976 statement of the National Conference, a true and correct copy of which is attached to this Affidavit as Exhibit C. More recently, the National Conference called "on all Christian citizens of good will to confront their own fears about homosexuality and to curb the humor and discrimination that offend homosexual persons." 1991 report of the National Conference entitled "Human Sexuality: A Catholic Perspective for Education and Lifelong Learning," a true and correct copy of which is attached to this Affidavit as Exhibit D (the "Bishops' Report"), at 55.

7. In 1982 the Archbishop of Milwaukee supported the passage of the nation's first statewide gay rights bill in Wisconsin. Similarly, Catholic bishops have opposed ballot initiatives which would have legalized discrimination against homosexuals. Some fifteen years ago, bishops from the dioceses of Los Angeles, San Francisco and Oakland opposed an anti-gay legislative proposition in California and last year the Catholic bishops of Oregon and Colorado opposed the anti-gay referenda voted on in their respective states. Recently, the President of the National Conference of Catholic Bishops, Archbishop Daniel Pilarczyk of Cincinnati, issued a statement urging voters in his city to reject a ballot initiative that would have prohibited anti-discrimination

protection for homosexuals, noting with concern that "the proposed amendment would make it possible to discriminate freely against persons of homosexual orientation in such matters as housing, employment and public accommodation." Cardinal Roger M. Mahony, leader of the second-largest Catholic diocese in the United States, also voiced his opposition to discrimination on the basis of sexual orientation earlier this year when he stated his view that homosexuals should be allowed to enlist in the nation's armed forces.

8. Last year, I joined Bishop Walter Sullivan of Richmond, VA and retired Bishop Charles Buswell of Pueblo, Colorado, as well as thousands of other U.S. Catholics, in signing a statement in support of the civil rights of lesbians and gay men (the "Statement"). A true and correct copy of the Statement is attached to this Affidavit as Exhibit E. I did so because, as a minister of God's Word and as an agent of the Roman Catholic Church, I believe that discrimination against homosexuals on the basis of their sexual orientation is immoral and contrary to the command of Jesus that we are to love our neighbors as ourselves (Mk. 12:31). Discrimination such as that represented by BSA's exclusion of homosexuals from membership and from leadership positions is the very type of discrimination I had in mind when I signed the Statement and voiced my opposition to discrimination against homosexuals.

9. In 1986, Joseph Cardinal Ratzinger asserted that "[i]t is deplorable that homosexual persons have been and are the object of violent malice in speech and action. Such treatment deserves condemnation . . . wherever it occurs . . . . It . . . endangers the most fundamental principles of a healthy society." A copy of Cardinal Ratzinger's 1986 letter was



attached to the certification of Father Hummel submitted by BSA in support of its cross-motion for summary judgment. Unfortunately, discriminatory policies such as BSA's exclusion of homosexuals can only serve to reinforce the prejudice and ill will that are the source of the violence condemned by Cardinal Ratzinger.

10. As an Eagle Scout myself, I share the commitment of the Roman Catholic Church to BSA and to the values represented by BSA. From my own experiences as a Scout, I have always believed those values to include duty to God and reverence. Those same values are compromised, however, by BSA's policy of discrimination against homosexuals. During my years of involvement in BSA, I never understood sexual orientation to be relevant to the mission or values of Scouting.

11. As a Roman Catholic Bishop, I believe that a homosexual orientation is not immoral or unclean. I further believe that one can be homosexual in orientation and at the same time be a good Catholic. These beliefs comport with the teachings of the Bishops' Report. In the Bishops' Report, the National Conference clearly stated that a "[homosexual] orientation . . . is not sinful." Ex. D at 55. The Washington State Catholic Conference built on this notion by stating that "[t]he Church does not morally condemn homosexual orientation . . . . nor are homosexual persons to be blamed for not changing their orientation." Ex. A.

12. I reject the notion suggested by BSA that homosexuals cannot be appropriate role models for young people. I believe that appropriate role models for young people are persons who exhibit values such as reverence, commitment, honesty and fairness. As homosexuals are just

as likely as heterosexuals to display such values, homosexuals are just as likely as heterosexuals to be appropriate role models for young people, and sexual orientation is an irrelevant consideration in such a determination.

/s/ Thomas J. Gumbleton
Bishop Thomas Gumbleton

Sworn to before me this 6th day
of January, 1994

/s/ Louise A. Cowan
Notary Public



SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY

[CAPTION OMITTED]

AFFIDAVIT OF REVEREND
WILLIAM A. HANSON

STATE OF NEW JERSEY )
) ss.
COUNTY OF MONMOUTH )

REVEREND WILLIAM A. HANSON, being duly sworn, deposes and says:

1. I reside in Monmouth County in the State of New Jersey. I make this affidavit in support of the summary judgment motion of plaintiff James Dale. I have personal knowledge of all of the facts set forth herein.

2. I am pastor of the King of King's Lutheran Church, located in Middletown, New Jersey. I have held this position for 27 years. Prior to my affiliation with King of King's Lutheran Church, I was the assistant pastor of First Lutheran Church, located in East Orange, New Jersey, for two years. I obtained my theological training at Northwestern Lutheran Theological Seminary and was ordained in 1965.

3. In addition to being pastor of King of King's Lutheran Church, I hold several community and church-related positions: I sit on the Alcohol and Drug Task Force of the New Jersey Synod of the Evangelical Lutheran Church; I am the Vice Chairman of the Monmouth County Board of

Alcohol and Drug Abuse Services, and the Chairman of the Board's Youth Committee; and I serve as Secretary of the Institutional Review Board of Riverview Hospital.

4. The Dick family -- James Dale, his brother Robert, and his parents -- moved to Port Monmouth, New Jersey in 1976, and joined my congregation at that time. The family has always been active in the church community, attending services and church programs regularly.

5. From about the age of 5 through his high school years, James Dale spent a significant amount of time in church-related activities. He sang in the Cherub Choir, attended Sunday School, was an active member of our church youth group, and, when he grew older, taught Vacation Bible School and Sunday School to children in the congregation. For several years, James Dale was also a member of a Scout troop chartered by our church, but when the troop folded because of lack of adult leadership, James joined a different troop.

6. Over the years, I came to know James Dale quite well. I respected his commitment to the Church, the Scouting program, and his community. I valued his sincerity, his caring nature, and his sense of responsibility. My high opinion of James Dale's character can be summarized quite simply: he is a young man with whom I would be comfortable leaving my grandchildren. I know that my grandchildren would learn many positive lessons from James Dale if, for example, they went on a camping trip together.

7. I learned that James Dale is gay in approximately 1992, when I read an article in a local newspaper about this lawsuit and about his expulsion from Scouting on the basis of



his sexual orientation. Although I did not know that James was gay before he left Monmouth County to attend college at Rutgers University, learning of his sexual orientation did not in any way change my opinion of him.

8. I became aware that Boy Scouts of America has a policy excluding homosexuals from youth and adult membership in Scouting when I learned of the lawsuit in which James Dale is involved. I did not know of this policy during the period when King of King's Lutheran Church chartered a Scout troop. Had I known of the policy, I would have discouraged the leaders of the church from affiliating themselves or our church with Scouting.

9. I have been informed by James Dale's attorneys that Boy Scouts of America contends that homosexuality is inconsistent with the requirement in the Scout Oath that a Scout be "morally straight." I strongly disagree with this interpretation of the term "morally straight," and do not believe that sexual orientation is relevant to a definition of what it means to be morally straight. I have never suggested to my congregation that homosexuals are not morally straight.

10. There was a time in history when left-handed people were thought to be of the Devil. Today we know that they can be as morally straight as anyone else, and that left handedness has nothing to do with morality. James Dale has conducted himself as the Scouts taught him to, and has grown to be a responsible leader and a young man of integrity. If James Dale did not admit his homosexuality, he would not be being honest with himself or with society; and that kind of dishonesty would <u>not</u> be "morally straight."

11. I have been informed by James Dale's attorneys that Boy Scouts of America claims that homosexuality is inconsistent with the requirement in the Scout Law that a Scout be "clean" in body and mind and in thought, word and deed. I strongly disagree with this interpretation of the term "clean," and do not believe that sexual orientation is relevant to a definition of what it means to be clean. I have never suggested to my congregation that homosexuals are not clean, either in a literal sense, or in the context of cleanliness of spirit.

12. I have also been informed by James Dale's attorneys that Boy Scouts of America claims that James Dale cannot be a good role model for Scouts because he is gay. I strongly disagree with this claim. I do not believe that sexual orientation is relevant to whether an adult is a good role model. Had I known that James Dale was gay during the period when he was growing up, I would nevertheless have wanted him to be just as actively involved in church programs as he was. I would still have considered him an ideal role model and would have encouraged him to lead church youth groups, and to teach Sunday School and Vacation Bible School. In short, my admiration for James Dale, and my willingness to entrust him with the care and responsibility of the children in my congregation during his teenage years, would not have been affected in any way had I known that he is gay.

13. Were James Dale to indicate to me that he is interested in working with church youth groups or teaching Sunday School today, I would not hesitate to encourage him to do so. It strikes me as sad and ironic that -- at a time when it is increasingly difficult in our society to find young adults



willing to devote their time and energy to serving their communities and helping others -- a young man who would be welcome as a leader in his church is not similarly welcome in the Scouting organization.

/s/ Rev. William A. Hanson
Rev. William A. Hanson

Sworn to before me this
31st of December, 1993

/s/ Marion Theisen
Notary Public

Selected Exhibit to the Certification of Patrick G. Marette, Attorney for Respondent

**UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

No. 92-5339

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THE PRESBYTERY OF NEW JERSEY OF THE ORTHODOX PRESBYTERIAN CHURCH, a New Jersey Corporation, CALVARY ORTHODOX PRESBYTERIAN CHURCH OF WILDWOOD, a New Jersey Corporation, and REV. DAVID B. CUMMINGS, Plaintiffs,

v.

JAMES FLORIO GOVERNOR OF NEW JERSEY in his official capacity; ROBERT J. DEL TUFO, ATTORNEY GENERAL OF NEW JERSEY, in his official capacity; ROBERT J. DEL TUFO, MARILYN FLANZBAUM, ANGEL ROMAN, BETTY CARSON, OLGA L. VAZQUEZ-CLOUGH, FELTON LINGO, SR., REINHOLD W. SMYCZEK and CASEY TAM, all in their official capacities as members of the DIVISION ON CIVIL RIGHTS, and C. GREGORY STEWART, in his official capacity as Executive Director of the DIVISION ON CIVIL RIGHTS, Defendants.

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On Appeal From The United State District Court For The District of New Jersey

No. 92-1641 (WGB)



Civil Action
Hon. William G. Bassler

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**BRIEF OF AMICI CURIAE JAMES E. ANDREWS AS STATED CLERK OF THE PRESBYTERIAN CHURCH (U.S.A) GENERAL ASSEMBLY, THE DIOCESAN COUNCIL OF THE EPISCOPAL DIOCESE OF NEWARK, RIGHT REV. JOHN S. SPONG, BISHOP OF THE EPISCOPAL DIOCESE OF NEWARK, THE LUTHERAN OFFICE OF GOVERNMENTAL MINISTRY IN NEW JERSEY, AND THE NEW JERSEY-WEST HUDSON VALLEY COUNCIL OF THE UNION OF AMERICAN HEBREW CONGREGATION**

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## STATEMENT OF JURISDICTION

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## STATEMENT OF THE STANDARD OF REVIEW

*For all of the above, amici curiae adopt the statements as set out in Appellees' brief.

## STATEMENTS OF INTEREST OF THE *AMICI CURIAE*

### James E. Andrews, as stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.)

James E. Andrews, as Stated Clerk of the General Assembly, is the senior continuing officer of the highest governing body of the Presbyterian Church (U.S.A.). The Presbyterian Church (U.S.A.) is the largest Presbyterian denomination in the United States, with approximately 3,000,000 active members in 11,500 congregations organized into 172 presbyteries under the jurisdiction of 16 synods.

The General Assembly does not claim to speak for all Presbyterians, nor are its decisions binding on the membership of the Presbyterian Church. The General Assembly is the highest legislative and interpretive body of the denomination, and the final point of decision in all

disputes. As such, its statements are considered worthy of respect and prayerful consideration of all the denomination's members.

Since 1978, General Assemblies of the Presbyterian Church have stood firmly in support of equal rights for homosexual persons under the law. These statements include a call for civil rights in housing, employment, and public accommodations.

The Diocesan Council of the Episcopal Diocese of Newark

The Diocesan Council of the Episcopal Diocese of Newark is a representative body of clergy and lay people from throughout the Diocese of Newark. The Diocesan Council is composed of members elected by church convocations, members elected by the Annual Convention of the Diocese, and members appointed by the Bishop. The Diocesan Council performs the ongoing business of the church between meetings of the Annual Convention.

Right Rev. John S. Spong, Bishop of the Episcopal Diocese of Newark

The Right Reverend John S. Spong is the Bishop of the Diocese of Newark, within the Episcopal Church of the United States, in affiliation with the worldwide Anglican communion. As bishop, he is the spiritual and governing ecclesiastical leader for some 30,000 confirmed communicants and approximately 275 clergy. Within his jurisdiction are 130 congregations, spread across the upper seven counties of the State of New Jersey.

Bishop Spong and the leadership of the Diocese of Newark do not claim to represent all Episcopalians, either



within the diocese or across the national church. There is, however, an acknowledged strong leadership within this Diocese and by its Bishop to honor human rights on all levels for all people as a basic tenet of the Christian faith.

The Lutheran Office of Governmental Ministry in New Jersey

The Lutheran Office of Governmental Ministry in New Jersey was established in 1985 to advocate justice for the poor and powerless. It is a partnership of the New Jersey Synod-Evangelical Lutheran Church in America, the New Jersey Council of Churches, and Lutheran Social Ministries in New Jersey.

The Policy Board is responsible for the policy decisions of the Lutheran Office of Governmental Ministry in New Jersey. Policy positions are developed for interpretation to public officials, Lutheran pastors and lay members and institutions of the Synod, after study of Evangelical Lutheran Church in America (ELCA) social statements, statements of the predecessor church bodies, statements of the New Jersey Council of Churches, and specifics of public policy issues impacting the poor and the powerless. The Policy Board is composed of nine members. Seven members are appointed by the Bishop of the New Jersey Synod-ELCA and approved by the New Jersey Synod Council. In addition, one person is appointed by each of the following agencies: the New Jersey Council of Churches and Lutheran Social Ministries of New Jersey. The Policy Board does not speak for its member denominations or organizations.

The New Jersey-West Hudson Valley Council of the Union of American Hebrew Congregations

The New Jersey-West Hudson Valley Council of the Union of American Hebrew Congregations is the representative office of the national Union of American Hebrew Congregations in New Jersey. The Union of American Hebrew Congregations is a religious and educational organization dedicated to the principles of Reform Judaism. Reform Judaism has consistently proclaimed that just as all people are equally the children of God, so too do we all deserve full protection of and equal treatment under the law, regardless of race, gender, religion or sexual preference. Towards this end, the New Jersey-West Hudson Valley Council has consistently supported both equal rights for gay people and strong protection of religious freedom and separation of church and state. The regional office serves 46 member synagogues in the state of New Jersey with a combined estimated membership of 50,000 people.

## ARGUMENT

### I. MAJOR RELIGIOUS ORGANIZATIONS SUPPORT BASIC CIVIL LIBERTIES FOR GAY AND LESBIAN PEOPLE

Governing bodies of the Orthodox Presbyterian Church have brought the immediate action challenging the amendments to New Jersey's Law Against Discrimination which added affectional or sexual orientation to the state statute. In light of this challenge by Orthodox Presbyterian Church, it is vital that this Court know of the firm support of such anti-discrimination laws by major United States religious organizations and their affiliates.



Presbyterian

Since 1978, predecessor bodies of the Presbyterian Church (U.S.A.) have called upon their members and civil government to ensure the civil liberties and equal rights of homosexual persons:

> There is no legal, social, or moral justification for denying homosexual persons access to the basic requirements of human social existence . ....
>
> Vigilance must be exercised to oppose federal, state, and local legislation that discriminates against persons on the basis of sexual orientation and to initiate and support federal, state, or local legislation that prohibits discrimination against persons on the basis of sexual orientation in employment, housing, and public accommodations.

*The Church and Homosexuality. Minutes of the 190th General Assembly, United Presbyterian Church, U.S.A. at 265 (1978).*

> The 117th and 118th General Assemblies asserted "the need for the church to stand for just treatment of homosexual persons in our society in regard to their civil liberties, equal rights and protection under the law from social and economic discrimination which is due all its citizens."

*Homosexuality and the Church: A Position Paper. Minutes of the 119th General Assembly. Presbyterian Church in the United States at 208 (1979).*

Episcopalian

General Conventions of The Episcopal Church have endorsed equal rights for homosexual persons since 1976. The Diocese of Newark has reaffirmed that call in its specific support of the amendments to the New Jersey Law Against Discrimination:

> [I]t is the sense of this General Convention that homosexual persons are children of God who have a full and equal claim with all other persons upon the love, acceptance, and pastoral concern and care of the Church.

*Homosexuals are the Children of God. Action of the Episcopal Church General Convention (1976).*

> [T]his General Convention expresses its conviction that homosexual persons are entitled to equal protection of the laws with all other citizens, and calls upon our society to see that such protection is provided in actuality.

*Homosexuals-Equal Protection. Action of the Episcopal Church General Convention (1976).*

> That the 67th General Convention reaffirms the actions taken by the General Conventions of 1976 and 1979 affirming that homosexual persons are children of God and are entitled to full civil rights.

*Civil Rights of Homosexuals. Action of the Episcopal Church General Convention (1982).*

> RESOLVED, that to maintain fidelity and faith with its mission, the Episcopal Diocese of Newark hereby



> declares that it is a violation of church policy to discriminate in hiring, firing, conditions of employment and salary, deployment, membership and admission, on the basis of affectional and sexual orientation, and calls upon all congregations and members of the diocese to continue, in their daily lives, to support the human rights of all God's people in understanding, public witness, and practice ....

*Anti-Discrimination Bill. Resolution III. Journal of the 117th Convention of the Diocese of Newark Protestant Episcopal Church (1991).*

Lutheran

In 1986, the New Jersey Synod-Lutheran Church in America Convention specifically endorsed the inclusion of sexual orientation in the New Jersey Law Against Discrimination. Although the present Evangelical Lutheran Church in America (formed in 1988) has not yet established its denominational policy on civil liberties for homosexual persons, two of its predecessor denominations stood in favor of legal protections:

> Scientific research has not been able to provide conclusive evidence regarding the causes of homosexuality, nevertheless, homosexuality is viewed biblically as a departure from the heterosexual structure of God's creation. Persons who engage in homosexual behavior are sinners only as are all other persons-alienated from God and neighbor. However, they are often the special and undeserving victims of prejudice and discrimination in law, law enforcement, cultural mores and congregational life. In relation to

this area of concern the sexual behavior of freely consenting adults in private is not an appropriate subject for legislation or police action. It is essential to see such persons as entitled to understanding and justice in church and community.

*Sex, Marriage and Family. 5th Lutheran Church In America Convention, p.4, paragraph 1 (1970).*

Truth, mercy, and justice should impel members of congregations of the American Lutheran Church to review their attitudes, words, and actions regarding homosexuality. Christians need to be more understanding and more sensitive to life as experienced by those who are homosexual. They need to take leadership roles in changing public opinion, civil laws, and prevailing practices that deny justice and opportunity to any persons, homosexual or heterosexual. We all need recognition and acceptance as human beings known to and loved by God.

*Human Sexuality and Sexual Behavior. 10th American Lutheran Church Convention, p. 8, paragraphs 3, 4,5, and 6; and p. 9, paragraph 1. (1980).*

Reform Judaism

Since 1977, the Union of American Hebrew Congregations (UAHC) has urged its membership to oppose discrimination against homosexuals in all areas, including employment and housing:

WHEREAS the UAHC has consistently supported civil rights and civil liberties for all persons, and



WHEREAS the Constitution guarantees civil rights to all individuals,

BE IT, THEREFORE, RESOLVED that homosexual persons are entitled to equal protection under the law. We oppose discrimination against homosexuals in areas of opportunity, including employment and housing. We call upon our society to see that such protection is provided in actuality.

BE IT FURTHER RESOLVED that we affirm our belief that private sexual acts between consenting adults are not the proper province of government and law enforcement agencies.

BE IT FURTHER RESOLVED that we urge congregations to conduct appropriate education programming for youth and adults so as to provide greater understanding of the relation of Jewish values to the range of human sexuality.

*Human Rights of Homosexuals. Resolution. Biennial Convention of the General Assembly of the Union of American Hebrew Congregations (1977).*

## II. ORTHODOX PRESBYTERIAN CHURCH'S BROADBASED ATTACK ON THE NEW JERSEY LAW AGAINST DISCRIMINATION INVITES AN IMPERMISSIBLE ESTABLISHMENT OF RELIGION

The Orthodox Presbyterian Church (OPC) broadly and vigorously attempts to enjoin the enforcement of the new amendments to the New Jersey Law Against Discrimination prohibiting discrimination on the basis of affectional or

sexual orientation. In so doing, OPC seeks to breach the wall of separation between church and state and apply its own moral precepts squarely within the realm of civil government.

The District Court clearly and properly ruled the amendments regarding sexual orientation do not apply to OPC when it acts as an employer, when it provides housing and accommodations, or when it engages in speech. As determined by the District Court; the statute itself exempts religious organizations; the history of its enforcement exempts religious organizations; and, the future plans for enforcement exempt religious organizations. These are correct and proper rulings guaranteeing OPC its rights of free exercise.

The District Court could not have been more clear in declaring OPC's protected rights of free exercise. In employment, the Court noted "it is lawful for a religious association or organization in this state to use the tenants [sic]* of its religion in establishing and utilizing criteria for hiring an employee ...." *D. Ct. Op. at 14 (June 19, 1992).* As determined by the District Court, the statute makes the religious exemption explicit:

> [I]n fact, not only does [the statute] not preclude a religious organization from hiring or firing based upon

* Throughout the trial court transcript, the term "tenets" is misspelled as "tenents." Subsequent quotations of the transcript in this brief will use the corrected spelling.



> its own membership, but it goes, in my opinion, beyond and specifically permits a religious organization to make employment decisions based upon the tenets of its own religion regardless of whether or not the effected [sic] person is a member of that religious profession.

*Id. at 7.*

Regarding OPC's real estate, the Court quoted New Jersey law:

> [Nothing herein contained shall be construed to bar any religious or denominational institution or organization or any organization operated for charitable or educational purposes which is operated, supervised or controlled by or in connection with a religious organization in the sale, lease, or rental of real property from limiting admission to or giving preference to persons of the same religion or denomination, or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

*Id. at 6.*

In regards to accommodations, Orthodox Presbyterian Church is once again exempt from the New Jersey amendments: "[T]here is a clear conclusion that this statute is not intended to apply to exercise of religion and religious houses of worship." *Id. at 7.* Further, as found by the Court, "the language of the statute and prior case law evidenced no intention of the Legislature to extend the law against discrimination to religious exercises whether in church or in the synagogue, or a park or auditorium ...." *Id. at 13.*

In regards to speech, OPC declared the New Jersey amendments would infringe on its rights to condemn homosexuals and homosexual activity. As with its prior rulings, the District Court pointed out OPC was incorrect: "The concern that the civil rights or the law against discrimination reaches religious exercises has no basis in the statute itself or in the history of the statute." *Id. at 5.* "Nothing in the statute in any way precludes the preaching of the moral code of any particular religious organization...," *id. at 7*, "or in any way to inhibit public statements disapproving of certain sexual morays [sic]." *Id. at 13.*

> [T]he Division of Civil Rights has not in the past prosecuted and has no intention to prosecute, essentially, exempt religious organizations for sincerely held religious beliefs or practices or speech consistent with that belief or for a refusal to engage in certain speech or for following their religious tenets.

*Id. at 10.*

Undaunted by these clear rulings throughout the District Court's opinion, Orthodox Presbyterian Church persists in its singleminded attack on the amendments. As noted above, in so doing, OPC overreaches and seeks to enforce its own sincerely held moral orthodoxy on the civil government of New Jersey and the citizens of the state.

The first amendment to the United States Constitution, as applied to the states through the fourteenth amendment, ensures both the free exercise of religion and that civil government shall not establish religion. *U.S. Const., Amend I.* As detailed above, the District Court properly declared OPC's guaranteed free exercise throughout its opinion.



Nevertheless, OPC pursues this action in its quest to have the new amendments entirely nullified. The first amendment establishment clause prohibits such a result.

According to the United States Supreme Court's decision in *Lemon v. Kurtzman, 403 U.S. 602, 619 (1971)*, the first amendment's establishment clause fundamentally proscribes "an excessive government entanglement with religion." If Orthodox Presbyterian Church's particular religious views were applied to enjoin the enforcement of the New Jersey amendments, the excessive entanglement cautioned by the Supreme Court would result.

> The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views.

*United States v. Ballard, 322 U.S. 78, 87 (1944).*

Both the State of New Jersey and the District Court carefully adhered to these guiding principles. Both the State of New Jersey and the District Court recognized and respected OPC's constitutional rights of free exercise--its right as a religious institution to discriminate in employment, housing, accommodations, and speech on the basis of its sincerely held religious beliefs. Both the State or New Jersey and the District Court declined, however, to establish Orthodox Presbyterian Church's religious views as the civil law of New Jersey. In so doing, they properly avoided

excessive entanglement between government and religion and secured the widest possible toleration of conflicting views.

There is no doubt that the line between the first amendment's free exercise clause and the establishment clause is a narrow one. Yet, in this case, it was carefully traversed by both New Jersey and the District Court. The essence of this narrow but carefully drawn constitutional line was simply stated by the District Court:

> [I]t is this Court's reading of the law against discrimination that the purpose of the statute is to accommodate the legislature's decision to protect certain protected categories of individuals from discrimination and, at the same time, to accommodate...and respect the religious tenets of religious organizations.

*D. Ct. Op. at 4-5 (emphasis added).*

The District Court's judgment carefully and scrupulously preserves all of the constitutional free exercise rights to which Orthodox Presbyterian Church is due as a religious organization. To provide even more, as urged by OPC, would violate the first amendment establishment clause. Predating both the United States Constitution and its Bill of Rights, amicus Presbyterian Church has stood firm by this guiding principle: "We ask no ecclesiastical establishments for ourselves; neither can we approve of them when granted to others." *Hanover Presbytery's Memorial to the Virginia Legislature (Oct. 7, 1776).* Today, over 200 years later, this basic principle remains true.



## CONCLUSION

For the foregoing reasons, *amici curiae* urge this Honorable Court to affirm the judgment of the District Court.

Respectfully submitted,

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*Amici Curiae*

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY

---

Civil Action No. Mon C 330-92

JAMES DALE,

Plaintiff,

v.

THE BOY SCOUTS OF AMERICA
and THE MONMOUTH COUNCIL,
BOY SCOUTS OF AMERICA,

Defendants.

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## AFFIDAVIT OF RABBI ALEXANDER SCHINDLER IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

STATE OF NEW YORK )
) ss.
COUNTY OF NEW YORK )

RABBI ALEXANDER SCHINDLER, being duly sworn, deposes and says:

1. I reside in Fairfield County in the State of Connecticut. I submit this affidavit in support of plaintiff James Dale's motion for summary judgment. I have personal knowledge of the facts set forth herein.



2. Since 1973, I have been President of the Union of American Hebrew Congregations (the "UAHC"). The UAHC is the governing body of Reform Judaism, North America's largest Jewish body. As UAHC President, I head the synagogue movement of Reform Judaism in the United States and Canada, composed of 1.3 million persons in 860 synagogues.

3. I was born in Germany in 1925 and fled the Nazis with my family when I was 12, settling in the United States. I earned a Purple Heart and a Bronze Star for my service as a ski-trooper in World War II. Thereafter, I graduated from the City College of New York before studying for the rabbinate at Hebrew Union College, where I was ordained. In addition to my service as UAHC President over the past 20 years, I served as chairperson of the Conference of Presidents of Major Jewish Organizations from 1976 to 1978. Additionally, I am a vice president of the World Jewish Congress, a member of the Governing Board of the Jewish Agency, secretary of the Joint Distribution Committee and a vice president of the Memorial Foundation for Jewish Culture. I have received honorary doctorates from several American colleges and universities and in 1978, I was awarded the Bublik prize of the Hebrew University, an honor bestowed earlier on President Harry Truman and Prime Minister David Ben Gurion, among others.

4. Under the teachings of Reform Judaism, homosexuality is not a sin and a Reform Jew should not conclude that homosexuals are immoral or unclean. Reform Judaism believes that God values loving, committed relationships, regardless of the sexual or affectional orientation of those involved.

5. Reform Jews are aware of the costs to individuals, families and society of the oppression of those who differ from society's majority. In part for this reason – and in part in accordance with the teaching of our faith that all human beings are created "betselem elohim" (in the divine image) – numerous bodies of Reform Judaism have strongly condemned discrimination on the basis of sexual or affectional orientation – including the policy of Boy Scouts of America ("BSA") of excluding homosexuals from membership and leadership positions.

6. On April 9, 1992, the Executive Board of the Central Conference of American Rabbis (the "Central Conference Board") – citing the inconsistency between BSA's policy of excluding homosexuals and the UAHC's well-established support for "civil rights for all, regardless of sexual orientation" – called upon BSA "to open its membership and leadership to all men and boys without regard to their sexual orientation." The Central Conference Board further resolved to "begin discussion with the Boy Scouts on this matter." A true and correct copy of the April 9, 1992 resolution of the Central Conference Board is attached to this Affidavit as Exhibit A.

7. In the same spirit, the Executive Board of the National Federation of Temple Youth (the "NFTY") – the largest youth organization of Reform Judaism – called upon "the Boy Scouts of America and all other organizations affiliated with the Boy Scouts which have the same policy on homosexuals, to open [their] membership and leadership to all men, women, and boys without regard to their sexual orientation." A true and correct copy of the statement of



NFTY's Executive Board is attached to this Affidavit as Exhibit B. Indeed, to demonstrate the gravity of its objections to BSA's discriminatory policy, the Executive Board further resolved "that NFTY encourage[s] all its members to divest from the Boy Scouts of America and all other organizations affiliated with the Boy Scouts which have the same policy on homosexuals, financially and to withdraw their membership from the Boy Scouts and all other organizations affiliated with the Boy Scouts which have the same policy on homosexuals, until basic civil rights are extended to include homosexuals." Ex. B. In support of its dramatic action, the Executive Board cited the inconsistency between the policy of excluding homosexuals from Scouting and the firmly established support of the UAHC and the NFTY for "civil rights for all, regardless of sexual orientation." Id.

8. In 1992, I conveyed my own deeply-held objections to the BSA policy of excluding homosexuals from membership and leadership positions in a letter to Mr. Richard Leet, president of BSA. A true and correct copy of my letter to Mr. Leet is attached to this Affidavit as Exhibit C. In my letter, I praised the Scouts' emphasis on what are often referred to as "family values" as being "necessary components of a strong, healthy society," but registered my firm disagreement with the view that such values exclude persons who are homosexual. Ex. C.

9. In my letter to Mr. Leet, I also underscored the conflict between BSA's policy of discrimination and the UAHC's "strongly held and public position in support of human rights, including the rights of lesbian and gay men,

and specifically in support of full inclusion of lesbian and gay Jews in all aspects of synagogue life." Ex. C (emphasis added). I concluded by expressing "my hope [that] the Boy Scouts of America will reconsider its position." Id.

10. As I mentioned in my letter to Mr. Leet, I do not believe that BSA's policy of discrimination can be considered in a vacuum. Beyond my deeply-held moral objections to a bigoted and discriminatory policy, I am further concerned by the effects which flow from such a policy. As I stated in my letter, "[w]e Jews are too aware that the denial of basic human dignity can lead to a denial of civil rights and violence based on bigotry. We are aware of the prevalence of anti-gay violence in our society and the percentage of this violence which is perpetrated by adolescents." Ex. C. My letter expressed my hope that BSA might "play a leadership role in fostering respect for the basic human dignity of all." Id. This is not possible as long as the policy of excluding homosexuals from membership and leadership positions stands.

11. Reform Judaism's condemnation of the kind of discrimination represented by BSA's policy of excluding homosexuals is not new. In 1977, the UAHC General Assembly called for an end to discrimination against homosexuals, and in 1987 the same body called for the full inclusion of gay and lesbian Jews in all aspects of synagogue life. A true and correct copy of the 1977 resolution of the UAHC General Assembly is attached to this Affidavit as Exhibit D and a true and correct copy of the 1987 resolution of the UAHC General Assembly is attached to this Affidavit as Exhibit E. The UAHC General Assembly urged



congregations and affiliates to "encourage lesbian and gay Jews to share and participate in the worship, general congregational life, employment, and leadership of all synagogues; implement programs supportive of Jewish lesbians and gays; and, continue to develop educational programs in the synagogue and the community which promote understanding and respect for lesbians and gays." Ex. H (below).

12. In 1986, the American Jewish Committee Board of Governors declared its opposition to "discrimination based on sexual orientation in employment, housing, education and public accommodation." A true and correct copy of the 1986 Statement of the American Jewish Committee Board of Governors is attached to this Affidavit as Exhibit F.

13. In 1990, the Central Conference of American Rabbis, recognizing that "[a]ll Jews are religiously equal regardless of sexual orientation," adopted a report recommending that "all rabbis, regardless of sexual orientation, be accorded the opportunity to fulfill the sacred vocation which they have chosen." A true and correct copy of the 1990 Report adopted by the Central Conference of American Rabbis is attached to this Affidavit as Exhibit G. As Reform Jews, we refuse to discriminate on the basis of sexual orientation in accepting those who are otherwise qualified to occupy this most sacred position of spiritual leadership. As Reform Jews, we cannot accept a policy such as BSA's which shuts out many who might be exemplary leaders for our young people.

14. On November 1, 1991, the National Association of Temple Educators (the "NATE") unanimously adopted a

resolution which "[w]elcome[d] openly gay and lesbian educators to serve in positions of leadership in NATE" and "[s]upport[ed] the rights of all individuals within [its] profession to equal consideration and equal opportunities regardless of sexual orientation." A true and correct copy of the November 1, 1991 resolution of the National Association of Temple Educators is attached to this Affidavit as Exhibit H.

15. At its 38th Biennial Assembly in 1991, the National Federation of Temple Sisterhoods, citing the teaching of our faith that all human beings are created "betselem elohim" (in the divine image), called on member Sisterhoods to:

a. Support legislation and regulations on the state and federal levels which provide full opportunity and civil protection to gay men and lesbian women.

b. Advocate the full integration of gay and lesbian Jews within our congregations and communities.

c. Accept gay and lesbian individuals and families into congregations and affirm their right to affiliate as individuals or as families with all the privileges thereof.

d. Educate their members that commitment to human rights requires that gay and lesbian Jews have the opportunities to fulfill their aspirations to serve as rabbis, cantors and other professionals in our synagogues.

e. Urge their religious schools to sensitize our youth to the diversity of families and life styles.



A true and correct copy of the 1991 resolution of the National Federation of Temple Sisterhoods is attached to this Affidavit as Exhibit I.

16. As these statements reflect, Reform Judaism has long recognized the importance of ending discrimination against people on the basis of their sexual or affectional orientation. Our religion embraces all its members – including gay men and lesbian women – and encourages interested and committed members to undertake leadership roles. Nothing in our religion supports BSA's claim that gay men cannot be appropriate role models for youth.

17. The UAHC has also been active in the diverse coalition pressing for the extension of federal anti-discrimination legislation to encompass discrimination on the basis of affectional or sexual orientation. Toward this end, I have joined other prominent national figures, including other religious leaders, in signing a letter requesting endorsement of a bill introduced in the United States Congress which seeks to do just that. Federal anti-discrimination legislation is needed so that all of our nation's citizens, no matter which state they call home, can enjoy the security now enjoyed by citizens of New Jersey, knowing that if they work hard and play by the rules, they cannot legally be subjected to discrimination on the basis of their affectional or sexual orientation by employers or landlords or in public accommodations. New Jersey citizens enjoy that security because the state legislature and the Governor listened to the will of the people of this State – including the UAHC's New Jersey Council (representing 45 Reform Jewish congregations with over

20,000 members), the Jewish Family Service of Northern Middlesex County and the New Jersey Regional Office of the Anti-Defamation League of B'nai B'rith – and amended the New Jersey Law Against Discrimination to include sexual and affectional orientation.

/s/ Alexander Schindler
Rabbi Alexander Schindler

Sworn to before me this 4th day
of January, 1994

/s/ Rosaly Lofaso
Notary Public



Selected Exhibits to Affidavit of Rabbi Alexander Schindler

*ADOPTED BY THE EXECUTIVE BOARD OF THE CENTRAL CONFERENCE OF AMERICAN RABBIS*
*April 9, 1992*

*WHEREAS, the Boy Scouts of America has taken a position that excludes* gay *scouts and scout leaders, and*

*WHEREAS, the Central Conference of American Rabbis passed a resolution in 1990, that expresses the full acceptance of our gay and lesbian colleagues, and*

*WHEREAS, the Union of American Hebrew Congregations, in more than one resolution, has promoted civil rights for all, regardless of sexual orientation;*

*THEREFORE BE IT RESOLVED, that the Central Conference of American Rabbis call upon the Boy Scouts of America to open its membership and leadership to all men and boys without regard to their sexual orientation, and that the CCAR begin discussion with the Boy Scouts on this matter.*

Resolution on the Boy Scouts of America

WHEREAS the Boy Scouts of America has taken a position that excludes homosexual scouts and scout leaders, and

WHEREAS NFTY has passed a resolution at Convention 1991 expressing full acceptance of gay and lesbian members, and

WHEREAS the Union of American Hebrew Congregations, in more than one resolution, has promoted civil rights for all, regardless of sexual orientation,

THEREFORE LET IT BE RESOLVED that NFTY call upon the Boy Scouts of America and all other organizations affiliated with the Boy Scouts which have the same policy on homosexuals, to open its membership and leadership to all men, women, and boys without regard to their sexual orientation, and that NFTY begin discussion with the Boy Scouts of America and all other organizations affiliated with the Boy Scouts which have the same policy on homosexuals, on this matter through the efforts of the TYG,

LET IT FURTHER BE RESOLVED that NFTY encourage all its members to divest from the Boy Scouts of America and all other organizations affiliated with the Boy Scouts which have the same policy on homosexuals, financially and to withdraw their membership from the Boy Scouts and all other organizations affiliated with the Boy Scouts which have the same policy on homosexuals, until basic civil rights are extended to include homosexuals.

Submitted by,
The NFTY Executive Board 92-93



SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY

[CAPTION OMITTED]

AFFIDAVIT OF BISHOP JOHN S. SPONG IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

STATE OF NEW JERSEY )
) ss.
COUNTY OF ESSEX )

BISHOP JOHN S. SPONG, being duly sworn, deposes and says:

1. I am Bishop of the Episcopal Diocese of Newark. I reside in Morris county in the State of New Jersey. I make this affidavit in support of plaintiff James Dale's motion for summary judgment. I have personal knowledge of the facts set forth herein.

2. I am a Phi Beta Kappa graduate of the University of North Carolina at Chapel Hill. I received a Master's degree in Divinity and an honorary Doctor of Divinity degree from the Protestant Episcopal Theological Seminary in Virginia. I also received an honorary Doctor of Divinity degree from St. Paul's College. I have been president of the Alumni Association of my seminary and a trustee of both my seminary and St. Paul's college. In 1986, I was appointed to serve on the Episcopal Church's Standing Commission on Human Affairs and Health. I have authored 14 books and

over 70 published articles and am the most published member of the House of Bishops of the Episcopal Church.

3. In a 1992 report of the Task Force on Episcopal Identity of the 118th Convention of the Diocese of Newark (the "Task Force Report"), the Episcopal Diocese of Newark reiterated the Episcopal Church's traditional commitment to inclusiveness and its opposition to unjust forms of discrimination. A true and correct copy of the Task Force Report is attached to this Affidavit as Exhibit A. The Task Force Report recognized that "[o]ur human nature wants to expel; Jesus commands us to accept." Ex. A, Appendix H at v. That lesson has particular relevance with respect to the discrimination faced by lesbians and gay men, such as the plaintiff in this case.

4. The Task Force Report "affirm[s] not only the civil rights of gays and lesbians but also their right to ecclesiastically-endorsed unions." Ex. A, Appendix E at iii. The Task Force Report goes on to state that "non-celibate homosexual persons may be ordained to the priesthood," Id., and endorses "the attempt by the church to welcome people with same-sex orientation (even if not celibate) . . . because the basis for their inclusion at all levels is clearly justified and demanded by the sources of our faith." Ex. A, Appendix H at ii (emphasis added). The Task Force Report thus concluded that the inclusion of lesbians and gays "is beyond dispute." Id.

5. On the basis of these teachings, a member of the Episcopal Diocese of Newark should conclude that gay men are neither immoral nor unclean as a result of their sexual orientation. As stated by Bishop R. Stewart Wood, Jr., the



Bishop of the Episcopal Diocese of Michigan, God does not regard homosexuality as a sin; rather, how we as humans -- whether heterosexual or homosexual -- relate to one another "-- caring or exploiting -- is the source of sin." As I have myself expressed before, there is nothing unnatural about any shared love, even between two of the same gender, if that experience calls both partners into a fuller state of being.

6. The teachings of the Episcopal Diocese of Newark have never been contradicted by the highest decision making body of the national Episcopal Church. In fact, that same body has also condemned discrimination on the basis of sexual orientation. As early as 1976, the General Convention of the Protestant Episcopal Church passed a Statement on Human Sexuality. A true and correct copy of the 1976 Statement on Homosexuality is attached to this Affidavit as Exhibit B. The statement expressed the Church's "conviction that homosexual persons are entitled to equal protection of the laws with all other citizens" and called upon "our society to see that such protection is provided in actuality." Ex. B. The same statement recognized that homosexuals "have a full and equal claim with all other persons upon the love, acceptance, and pastoral concern and care of the Church." Id. In 1982, the General Convention of the Episcopal Church reaffirmed its position that "homosexual persons are children of God and are entitled to full civil rights." A true and correct copy of the 1982 General Convention of the Episcopal Church Resolution on Civil Rights of Homosexuals is attached to this Affidavit as Exhibit C.

7. In 1991, I wrote to New Jersey state legislators on behalf of the Episcopal Diocese of Newark urging them to

amend the Law Against Discrimination to prohibit discrimination based on sexual and affectional orientation. A true and correct copy of my 1991 letter is attached to this Affidavit as Exhibit D. In separate remarks in support of the same amendment of the Law Against Discrimination ("Remarks"), I emphasized the need to "extend to gay and lesbian people . . . the basic protection of the law that would prohibit those still under the power of their prejudices from acting out those prejudices in discriminatory ways against those whose sexual orientation is different." Remarks, a true and correct copy of which are attached to this Affidavit as Exhibit E, at 6. Boy Scout of America's policy of excluding people from membership on the basis of sexual or affectional orientation is precisely the type of discrimination which prompted me, on behalf of the Diocese, to request and support such legislation.

8. In my Remarks, I spoke of the power of prejudice. That power is such that prejudice causes us not only to act in certain ways "but even to feel justified in doing so." Ex. E at 3. Speaking specifically of the prejudice faced by lesbians and gay men in our society, I looked forward to the day "when this prejudice has joined the prejudice against blacks [and] women . . . in the graveyard of prejudices that mark the path of human progress" and commented that on that day "we will see how cruel we as a society acting out of ignorance have been." Ex. E at 5. It is never easy, as human beings, to face and to overcome the prejudices which hold sway over us but, as God's children, we must have the courage and the compassion to do so and to turn our attention to loving our gay and lesbian brothers and sisters, supporting them, and



relating to them as part of God's good creation. Now is the time to break the bondage of this prejudice that prevents that gift of life promised to all by the Christ from being realized.

9. As noted above, the Task Force Report concluded that "non-celibate homosexual persons may be ordained to the priesthood" in our Church. Ex. A, Appendix E at iii. In fact, our Diocese has several openly gay and lesbian priests, some of whom are single and others of whom live in faithful monogamous relationships, and "we are honest about and welcoming of" them. Ex. E at 6. As I observed in my Remarks, our Diocese's openly gay and lesbian priests "are serving with incredible faithfulness." Id. Further, they are "open and honest about who they are to their congregations and communities [and] are accepted, loved and trusted by their people as agents of the Christian Church." Id. As I said in my Remarks, "I honor them and treasure their friendships." Id. Those who are worthy to serve as the agents of the Church are certainly also worthy to serve as leaders of organizations such as BSA. In fact, nothing in the teachings of my religion supports BSA's claim that gay men cannot be appropriate role models for youth.

10. The Diocese of Newark has long been and continues to be an active sponsor of Boy Scouts of America ("BSA"). In New Jersey alone, over 50 BSA units are sponsored by local Episcopal parishes.

11. In March 1993, the Council of the Diocese of Newark (the "Council") passed a resolution that confirms that the Diocese's commitment to Scouting is based on our "support [for] the high ideals of scouting." A true and correct

copy of the 1993 Council resolution (the "Resolution") is attached to this Affidavit as Exhibit F. Ironically, those same high ideals are compromised by BSA's policy of excluding homosexuals from membership and leadership positions, because such a policy fosters in our youth a disrespect for those who are different from them.

12. The Resolution, unanimously passed, resolved to "ask the Boy Scouts of America to admit to full membership otherwise qualified homosexual persons." Ex. F. The Council also resolved to "ask all Episcopal congregations in our diocese which now sponsor troops to review the terms of sponsorship and to meet with local Boy Scout councils to explore appropriate ways together to end the BSA's national policy of discrimination." Id.

13. As support for its Resolution, the Council observed that BSA's policy of excluding homosexuals from membership "potentially contributes to lesbians' and gays' disproportionate share of teen suicides." Ex. F. The Resolution expressly repudiated BSA's "claims that it upholds/enforces family/religious/moral values," noting that "Jesus established the 'family value' that it is better that a millstone be hung about our necks and that we be cast to the bottom of the sea than that we should harm one of the least of God's little ones." Id.

14. The Resolution emphasizes that the aim of the Council in urging BSA to abandon its discriminatory policy is to allow "BSA to disentangle itself from captivity to a bigoted and prejudiced agenda," so that it can focus on fulfilling the "high ideals of scouting" - such as trustworthiness, honesty



and personal integrity - which have always provided the basis of our Church's support for the BSA. Ex. F. Simply stated: "[w]e want gays in, not the diocese out." Id.

/s/ John S. Spong
Bishop John S. Spong

Sworn to before me this 5th day
of January, 1994

/s/ Gail Deckenbach
Notary Public

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY

[CAPTION OMITTED]

AFFIDAVIT OF FATHER PAUL SURLIS
IN SUPPORT OF PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT

STATE OF NEW YORK )
) ss.
COUNTY OF QUEENS )

FATHER PAUL SURLIS, being duly sworn, deposes and says:

1. I am a Roman Catholic priest and Associate Professor of Moral Theology and Social Ethics at St. John's University in Queens, New York. I make this affidavit in support of plaintiff James Dale's motion for summary judgment. I have personal knowledge of the facts set forth herein.

2. I received Bachelor of Divinity, Master's Licentiate in Theology, and Doctoral Licentiate in Theology degrees from Saint Patrick's College, Pontifical University, in Maynooth, Ireland. I also received post-Doctoral training at Muenster University in Muenster, West Germany. I have taught at Notre Dame University in Indiana and Trinity College in Dublin, Ireland.

3. The numerous instances in which Roman Catholic bodies and religious leaders, particularly those within the United States, have condemned and actively opposed discrimination on the basis of sexual orientation are well documented. Similarly, it is clear that Catholic teaching does not regard homosexual orientation as sinful; thus one may be homosexual in orientation and at the same time be a Catholic in good standing.



4. Despite this clear teaching, it is commonly misperceived that anyone who does not accept the position of the Catholic Church in Rome that homosexual conduct is immoral -- a position relied upon by Defendants, see Certification of Donald K. Hummel, dated November 3, 1993, thereby forfeits their right to be considered a Catholic in good standing. The true position regarding the doctrinal status of the statements of the Catholic Church in Rome on the morality of homosexual conduct can only be appreciated when one also appreciates the distinction between the "infallible" teachings of the Roman Catholic Church and other, non-infallible teachings of the Church. Teachings presented to Catholics on the basis of infallible authority, whether of a general council or of the Pope, are guaranteed to be free from error and, though they do not represent the full truth on the issue in question, such teachings may not be rejected by Catholics. The statements of the Catholic Church in Rome on the morality of homosexual conduct are not -- and have never been -- among the infallible teachings of the Church. Because the teachings of the Catholic Church in Rome on the morality of homosexual conduct are not classified among the infallible teachings of the Church, they may be false, and thus they cannot require an assent that is absolute.

5. In the course of history, many non-infallible teachings of the Roman Catholic Church which were presented with real vigor and defended with great severity were subsequently shown to be false and are no longer taught by the Vatican or others in the Catholic Church. This is so despite the fact that many such teachings had as long a history and a more central position among the teachings of the Church than statements regarding the morality of homosexual conduct.

6. For example, for about 1,400 years the moral legitimacy of the institution of slavery was part of a non-infallible Catholic teaching, as was the view that a woman is a misbegotten male. Likewise, married people who engaged in sex for pleasure were considered guilty of venial sin. Non-infallible teachings also once held that there is no salvation outside the Catholic Church, that unbaptized infants go to limbo and that only a bishop may confirm. Such teachings also held that, where feasible, the Catholic Church should be established; thus, separation of church and state, as exists in the United States, was contrary to the non-infallible teachings of the Roman Catholic Church until an American priest spearheaded a move just three decades ago to change Church teaching on the subject.

7. From the foregoing it is clear that the individuals who refused to accept the non-infallible teachings of the Roman Catholic Church that were subsequently shown to be false were, in fact, the ones who upheld truth. Thus, Catholics who take the position that homosexual conduct is <u>not</u> sinful -- as some theologians and bishops and numerous



lay Catholics do -- are <u>not</u> disqualified from being considered Catholics in good standing. Indeed, before long, time may show them to be the ones who upheld truth on the issue of the morality of homosexual conduct.

/s/ Paul Surlis
Father Paul Surlis

Sworn to before me this 6 day
of January, 1994

/s/ Felicia Busto
Notary Public

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY

[CAPTION OMITTED]

CERTIFICATION OF BISHOP MELVIN WHEATLEY, JR. IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

STATE OF CALIFORNIA )
) ss.
COUNTY OF ORANGE )

BISHOP MELVIN WHEATLEY, JR. certifies:

1. I am an ordained elder and Bishop of The United Methodist Church, retired as of September 1, 1984. I reside in Orange County in the State of California. I make this certification in support of plaintiff James Dale's motion for summary judgment. I have personal knowledge of the facts set forth herein.

2. I received an A.B. from American University, Washington, D.C., in 1936 and a Bachelor of Divinity of Drew Theological Seminary, Madison, New Jersey, in 1939. I served for 33 years as the pastor of Methodist congregations in Delaware and California and for 12 years as bishop of the Denver area. Following my retirement, I taught for one year at the School of Theology Claremont in Claremont, California.

3. The United Methodist Church has a particularly strong relationship with and commitment to Boy Scouts of America ("BSA") and the values represented by BSA. BSA is an organization which fosters values such as honesty, loyalty, reverence, integrity and commitment in boys and young men. It is because of these values that The United Methodist Church has been the largest single supporter of BSA nationally, sponsoring more than 200 BSA troops in New Jersey alone. BSA's discrimination against homosexuals, however, is inconsistent with the clearly expressed condemnation by The United Methodist Church of discrimination on the basis of sexual orientation and has no apparent relation to the values that form the basis of The United Methodist Church's commitment to BSA.



4. BSA's discrimination against homosexuals offends the human dignity of such persons. The United Methodist Church has been very clear in condemning discrimination on the basis of sexual orientation. The Book of Discipline of the United Methodist Church--1992 (the "1992 Book of Discipline"), the law book of the Methodist denomination, adopted by the General Conference of the United Methodist Church at its 1992 meeting in Louisville, Kentucky, states the following: "We insist that all persons, regardless of age, gender, marital status, or sexual orientation, are entitled to have their human and civil rights ensured." 1992 Book of Discipline ¶ 71, Section F ("Human Sexuality") at 91.

5. The 1992 Book of Discipline also affirms that "[h]omosexual persons no less than heterosexual persons are individuals of sacred worth." Id. at 92.

6. The 1992 Book of Discipline adds further that "[c]ertain basic human rights and civil liberties are due all persons." 1992 Book of Discipline ¶ 71, Section G ("Rights

of Homosexual Persons") at 92. This passage continues by stating that as Methodists, "[w]e are committed to support those rights and liberties for homosexual persons." Id. The 1992 Book of Discipline further recognizes "a clear issue of simple justice" in protecting the rightful claims of homosexuals to, among other matters, "equal protection before the law." Id. (emphasis added). Simple justice is offended by BSA's policy, which judges individuals not on the content of their character or the quality of their contributions to the organization or to society, but on a trait bearing no relation to integrity, commitment or decency.

7. The 1992 Book of Discipline's statement regarding the rights of homosexuals concludes by stating our support, as Methodists, for "efforts to stop violence and other forms of coercion against gays and lesbians." Id. Unfortunately, as long as discriminatory policies such as BSA's remain in place, the lesson taught to our youth is not one of respect for those who are different but one of intolerance. Such intolerance only handicaps us further in our struggle to curb the increasing and disturbing tide of "hate crimes" in this country, of which homosexuals are a primary target.

8. BSA contends that most of its members would be led by the dictates of their respective religions to view homosexuals as "immoral" or "unclean." However, in my opinion God does not regard homosexuality as a sin. The preponderance of evidence now available identifies homosexuality to be as natural a sexual orientation for a significant percentage of persons as heterosexuality is the natural sexual orientation for the majority of persons. Homosexuality is an authentic condition of being with which some persons are endowed (a gift of God, if you please).



Certainly one's sexuality -- heterosexual or homosexual -- may be acted out in behaviors that are sinful: brutal, exploitative, selfish, superficial. But just as surely, one's homosexual orientation as well as another's heterosexual orientation may be acted out in ways that are beautiful: tender, considerate, mutual, responsible, loyal, profound.

9. Rev. Dr. Professor John B. Cobb, Jr., Ph.D., the son of Methodist missionaries, received his Master's and Ph.D. degrees from the University of Chicago Divinity School and has been a professor of theology at universities across this country and overseas. Dr. Cobb was my colleague at the School of Theology Claremont. Throughout his career, Dr. Cobb has been recognized internationally as an outstanding theologian. When asked whether he thinks that God regards homosexuality as sinful, Dr. Cobb responded as follows:

> Surely being attracted to persons of the same sex is not, as such, a sin. But of course how we act in our attractions, towards whichever sex, is often sinful. The ideal is to be responsible and faithful rather than self-indulgent. Unfortunately, society does not encourage responsible and faithful relations with persons of the same sex.

As Dr. Cobb recognizes, our focus in considering the morality of sexuality should be on the manner in which people use sexuality -- whether, for example, as a means of expressing a committed love or, alternatively, as a means of exploitation -- and not on the sexual orientation of the persons involved.

10. As a minister, I reject BSA's suggestion that homosexuals cannot constitute appropriate role models for children. The appropriateness of a role model turns on qualities such as the personal integrity and decency of the

individual and not on the individual's sexual or affectional orientation.

11. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

/s/ Bishop Melvin Wheatley, Jr.
Bishop Melvin Wheatley, Jr.

Dated: December 30, 1993



SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY

[CAPTION OMITTED]

CERTIFICATION OF DR. MICHAEL CAHN IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

STATE OF CALIFORNIA )
) ss.
COUNTY OF SANTA CLARA )

MICHAEL CAHN, M.D. certifies:

1. I, Michael Cahn, M.D., reside in San Jose, California. I make this certification in support of the motion for summary judgment of plaintiff James Dale.

2. I first became a registered member of Boy Scouts of America ("BSA") in 1940. In 1948, I earned my Eagle Scout badge and subsequently earned the Bronze, Gold and Silver Palms. I have been active in Scouting almost continuously since then.

3. Beginning in approximately 1973, I became active in Troop 260 in San Jose, California as an Assistant Scoutmaster. At first, my involvement was limited to leading the Troop on camping trips and other outdoor events. From 1983 until 1989, I served as Chairman of the Troop Committee of Troop 260. I have been the Scoutmaster of the Troop since 1989.

4. As an adult volunteer in Boy Scouts of America, I have completed Scoutmaster Trainer and High Adventure

Training. I received the District Award of Merit from the Mene Oto District of Santa Clara County Council, Boy Scouts of America.

5. I hold a B.S. in biology from Franklin and Marshall College and an M.D. from Thomas Jefferson University. From 1961 to 1963, I served as a Captain in the United States Army Medical Corps. I have been married for 36 years and have 3 grown children. I currently practice internal medicine in San Jose.

6. During my more than 50-year involvement in Boy Scouts of America, I have gained detailed knowledge of the policies of Boy Scouts of America. During this period and until approximately 1990, I was never aware that Boy Scouts of America had a policy of excluding homosexuals from membership. No one involved in Scouting ever told me that such a policy existed, nor did I ever read about such a policy in materials provided to me by Boy Scouts of America. I did not learn about such a policy during Scoutmaster Training or High Adventure Training sessions. Further, I have never learned anything during my time as a youth or adult volunteer in Scouting that suggests to me that homosexuals should not be eligible for membership in Boy Scouts of America.

7. The purposes of Boy Scouts of America as I have come to understand them are teaching young people outdoor and camping skills, developing their leadership abilities and sense of community responsibility, and providing them with the tools to make ethical choices over the course of their lives. I have never known the exclusion of homosexuals to be one of the purposes of Boy Scouts of America or to further any purpose of the Scouting program.



8. I first learned that Boy Scouts of America has a policy of excluding homosexuals from membership in 1990 when my son, Mark, told me about this policy. Mark teaches high school in San Jose and found out about this policy during a teacher sensitivity training session designed to educate teachers about the particular needs and concerns of their gay students.

9. I was extremely surprised to learn that Boy Scouts of America had this policy. In my tenure with Boy Scouts of America, I have known numerous gay men and lesbians who have served in various capacities in Scouting as adult volunteers and professionals. I never heard anyone object to their involvement in Scouting or suggest in any way that these individuals were immoral or unclean or not representative of the norms and values taught by Scouting. I never heard anyone suggest that Scouting was tolerating immorality or uncleanliness by allowing their participation in Scouting.

10. I also believe that this policy is antithetical to every principle I have ever learned in Scouting. I had always been told that Scouting was for all boys regardless of their differences, a notion which, as a Jew, I particularly cherished as a boy in the 1940s when many organizations and clubs were still closed to Jews. The first tenet of the Scout law holds that "a Scout is trustworthy." The Boy Scout Handbook describes this requirement to mean: "A Scout tells the truth. He keeps his promises. Honesty is a part of his code of conduct. People can always depend on him." It makes no sense to me that Scouting teaches Scouts to tell the truth but then expels gay Scouts if they are honest about their sexual orientation.

11. The Scout law also holds that "a Scout is reverent." Although duty to God has always been important in Scouting, I have always understood that Scouting does not impose any specific religious requirements on its members. Scouts need not believe in any one set of religious beliefs or even in a particular view of God. Rather, Scouting asks its members to understand and be faithful to the teachings of their own particular affiliations while tolerating the religious beliefs of others.

12. My religious beliefs are very important to me. I and my family are Reform Jews. We have worshiped at Temple Emanuel in San Jose for the past 30 years. I have served on the Board of Directors of that synagogue for eleven years, including for two years as President of the Board. I am currently Vice President of the Board. I have also served as a Regional Vice President of the Western Council of the Union of American Hebrew Congregations. My religious beliefs do not teach that homosexuality is immoral or wrong but that all loving, committed relationships are equal before God.

13. I have been told that Boy Scouts of America finds justification for its policy of excluding homosexuals from membership in the requirement of the Scout Oath that a Scout keep himself "morally straight". This position assumes and imposes a particular religion-based definition of morality on all Scouts. It is not only inconsistent with my beliefs and the beliefs of my religion, but it is also inconsistent with Scouting's general view that no particular set of religious beliefs should be imposed on all Scouts.

14. Scouting taught me to speak out for what I believe is right. It is very clear to me that Scouting's policy of



excluding homosexuals from membership is not right. I could not tell a Scout in my Troop that he has an obligation to be trustworthy and then kick him out of the Troop if he informs me that he is gay.

15. Therefore, on December 30, 1991, at a meeting of the Troop Committee of Troop 260, I voted in favor of a Resolution opposing the BSA's policy of excluding homosexuals as youth members or adult leaders. The Resolution, which the Troop Committee adopted unanimously, read as follows:

> Troop Committee troop 260 BSA, 30 Dec 1991
>
> **Resolved that the troop committee fully supports the tenets of the Scout Oath,** including the phrase " to keep myself .....morally straight." We do not agree that sexual orientation such as male or female homosexuality is immoral. Sexual preference is a private issue. We don't believe it to be relevant in the selection of adult leaders or in the awarding of the Eagle Scout rank.

A true and correct copy of this Resolution is attached hereto as Exhibit A.

16. Most people in Scouting with whom I spoke agreed with the principle of our Resolution, although they did not speak out as we had. None of the 26 boys in the Troop nor any of their parents objected to our voicing our opposition to the policy of excluding homosexuals from membership. In fact, many of the Scouts, in fulfillment of the requirement of the Citizenship in the Nation merit badge that the Scout write a letter to a public official addressing an issue of concern to him, wrote letters to the national office of BSA expressing

their opposition to this policy. Moreover, Rev. Jack Lundin, the pastor of Christ the Good Shepherd Church, the chartering organization of Troop 260, expressed his praise for the Resolution.

17. In February, 1992, Grant Robinson, the acting Scout Executive of Santa Clara County Council, Inc., Boy Scouts of America, having heard through media reports of our Resolution, sent a letter to Rev. Lundin requesting clarification of the Resolution. Our charter was up for renewal in March, 1992, and his request was explicitly aimed at obtaining information relevant to Charter renewal. Specifically, he asked the following two questions:

1. Do the chartered organization and the registered adults of Troop 260 agree that if a charter is granted to Troop 260 they will follow the established policies of the Boy Scouts of America?

2. With regard to the issue of homosexuals in Scouting, do the chartered organization and the registered adults of Troop 260 agree not to seek to register known or avowed homosexuals pending the appeal process in the Curran case?

18. In a subsequent letter, Mr. Robinson asked the Troop Committee of Troop 260 to clarify whether we intended to "actively seek to register known or avowed homosexuals." In responding to that question, we simply explained that we would not rescind our Resolution. Despite the fact that the Resolution declares that the Troop Committee will not enforce the BSA policy, our charter was renewed.

19. During the 50 years prior to the controversy spawned by Troop 260's opposition to the BSA policy, I was



never told that the term "morally straight" in the Scout Oath refers to sexual orientation or that homosexuals are not morally straight. I have never understood and have never known other Scouts to understand morally straight to refer to a specific set of moral values other than those which Scouting actively teaches, such as those contained in the Scout Law.

20. I have never been told that the term "clean" in the Scout Law refers to sexual orientation or activity of any kind, or that homosexuals cannot be "clean" within the meaning of the Scout Law. I have never interpreted the term "clean" in the Scout Law to refer in any way to sex or sexuality, and I have never been aware of any other Scout who interpreted "clean" in the Scout Law to refer in any way to sex or sexuality.

21. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

/s/ Michael Cahn, M.D.
Michael Cahn, M.D.

Dated: December 21, 1993

Exhibit to Certification of Dr. Michael Cahn

[LOGO OMITTED]

36 Years Active Service

**SCOUT TROOP 260**

SPONSOR • Christ The Good Shepherd Lutheran Church
1550 Meridian Ave • San Jose, CA 95124

Troop Committee troop 260 BSA, 30 Dec 1991

**Resolved that the troop committee fully supports the tenets of the Scout Oath,** including the phrase " to keep myself.....morally straight." We do not agree that sexual orientation such as male or female homosexuality is immoral. Sexual preference is a private issue. We don't believe it to be relevant in the selection of adult leaders or in the awarding of the Eagle Scout rank.

**"ON THE TRAIL TO EAGLE"**

[LOGO OMITTED]



SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY

[CAPTION OMITTED]

SUPPLEMENTAL AFFIDAVIT OF JAMES DALE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

STATE OF NEW YORK )
) ss.
COUNTY OF NEW YORK )

JAMES DALE, being duly sworn, deposes and says:

1. I am the plaintiff in the above-captioned litigation and submit this supplemental affidavit in support of my motion for summary judgment. I have personal knowledge of the facts set forth herein.

2. During my 12 years of Scouting experience, I was a member of three different Boy Scout Troops. As a young Scout, I was a member of Troop 220, which was chartered by the church to which I belonged -- King of Kings Lutheran Church. After Troop 220 folded due to lack of adult leadership, I joined Troop 128, which was chartered by Christ Church, a Presbyterian church. When Troop 128 also folded because there were not enough adult leaders, I joined Troop 73, which was chartered by a Methodist church in my community. I was a youth member of Troop 73 until I turned 18, and then became Assistant Scoutmaster of the Troop. I held this position until Defendants revoked my scouting membership in August 1990.

3. Although each of the Troops to which I belonged was chartered by a local church, all of my Scouting experience was non-sectarian. Some of my fellow Scouts went to church regularly; others were Jewish; and still others did not practice any religion, and did not attend any religious services. There was absolutely no requirement that members of Troop 220 be Lutheran, that members of Troop 128 be Presbyterian, or that members of Troop 73 be Methodist. In fact, the churches that acted as chartering organizations for my Troops did little more than provide meeting places and -- on occasion -- adult leadership; they provided no religious training whatsoever for me or my fellow Scouts.

4. My Scouting experience and training gave me confidence and self-esteem, and significantly improved my leadership, organizational, management and motivational skills. Prior to my expulsion from Scouting in August 1990, I intended to remain an active member of BSA for life. I planned to become a Scoutmaster after graduating from college because I felt an obligation to provide for other boys the type of Scouting program that had such a positive and significant impact on my own life. I also had less altruistic reasons for wanting to continue my involvement with Scouting: As an adult member of Scouting, I intended to continue to take advantage of training programs and other Scouters' expertise in order to learn skills that would be helpful not only in a Scouting context, but also in my personal and professional life.

5. When I left to attend college at Rutgers University, I was committed to my position as Assistant Scoutmaster of Troop 73. Because Rutgers was almost an hour's drive from my Troop's meeting place, I was unable to attend Troop



meetings regularly. Nevertheless, I retained my leadership position in my Troop because I intended to resume more active involvement in Scouting after graduating from college, and because I knew, from personal experience, that Troops often fold because they lack adult leaders. Despite the constraints of time and distance, I remained dedicated to my Troop, and made an effort to attend meetings whenever I was needed, and as often as possible.

6. Throughout my years in Scouting, I pledged to uphold the values in the Scout Oath and the Scout Law, including the values of being morally straight and clean. No one involved in Scouting ever told me -- and no Scouting literature with which I am familiar ever suggested to me -- that homosexuality is inconsistent with these values, or that a homosexual cannot be morally straight and clean. I never learned that it was a purpose of the Scouting program to exclude homosexuals. I never learned that admitting homosexuals would interfere with the fulfillment of Scouting's purpose of teaching boys to uphold the values in the Scout Oath and the Scout Law.

7. In fact, in my Scouting experience, boys were referred to their parents or religious leaders if they had questions or concerns about sexual issues. During my time as a youth and adult leader of my Troop, discussions regarding these issues never arose. Had any Scout approached me with questions regarding any such issues, I would have -- as instructed -- referred him to his parents or religious advisors. The Scouting program made clear only that sexual <u>conduct</u> of all kinds -- whether heterosexual or homosexual -- was inappropriate within the context of the Scouting experience. A person's sexual <u>orientation</u>, on the other hand, was neither

a subject of discussion, nor -- as far as I knew until my expulsion from Scouting -- remotely relevant to eligibility for membership.

/s/ James Dale
James Dale

Sworn to before me this 31 day
of December, 1993

/s/ Kevin W. Brown
Notary Public



SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY

[CAPTION OMITTED]

CERTIFICATION OF MARY LOU GOEKE

STATE OF CALIFORNIA )
) ss.
COUNTY OF SANTA CRUZ )

MARY LOU GOEKE certifies:

1. I, Mary Lou Goeke, reside in Santa Cruz County, California. I am the Executive Director of the United Way of Santa Cruz County (the "United Way"). I have personal knowledge of the facts set forth herein.

2. In the spring of 1992, the Board of Trustees of the United Way of Santa Cruz County decided that no organization would be eligible to receive funds from the United Way if that organization discriminated on the basis of sexual orientation in the provision of its services. Therefore, in connection with its funding request for the fiscal year ending in June, 1993, I requested that Monterey Bay Area Council, Inc., Boy Scouts of America, provide the United Way with a letter stating that it did not discriminate on the basis of sexual orientation in the provision of its services. Pursuant to that request, I received a letter from Dean R. Crafton, Council Scout Executive of Monterey Bay Area Council, Inc. A true and correct copy of that letter is attached to this certification as Exhibit A.

3. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

/s/ Mary Lou Goeke
Mary Lou Goeke

Dated: December 31, 1993



Exhibit to Certification of Mary Lou Goeke

[MONTEREY BAY AREA COUNCIL, INC., NO. 25 BOY SCOUTS OF AMERICA LOGO AND LETTERHEAD]

February 10, 1993

Ms. Mary Lou Goeke,
Executive Director
United Way of Santa Cruz County
P.O. Box 1458
Capitola, CA 95010

Dear Mary Lou:

The Boy Scouts Charter and Articles of Incorporation in the State of California require us to follow all laws that apply to our organization.

The Boy Scouts program, since its inception, has been designed to function at different age levels. The Tiger Cub program is for first graders, the Cub Scout program is for 2nd through 5th grades, the Boy Scouts program is for 6th through 8th grades, and the Explorer program is co-ed, 9th through 12th grades.

Our companion organization, the Girl Scouts of America, and the Boy Scouts reached an agreement many years ago on not being competitive. The Boy Scouts application for youth and the adult application do not discriminate on the basis of age, gender, sexual orientation, religion or national origin.

Sincerely,
/s/ Dean Crafton
DEAN R. CRAFTON,
Council Scout Executive

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY

[CAPTION OMITTED]

CERTIFICATION OF ROBERT GWINN

STATE OF NEW YORK )
) ss.
COUNTY OF TIOGA )

1. I, Robert Gwinn, reside in Tioga County in the State of New York. I make this certification in support of the summary judgment motion of plaintiff James Dale. I have personal knowledge of all of the facts set forth herein.

2. From June 1991 through June 1993, I held the position of Council President of Baden-Powell Council. On April 29, 1992, the Baden-Powell Council Executive Board passed a resolution urging the BSA National Executive Board to change its policy of excluding homosexuals from membership in BSA to allow individual chartering organizations to establish their own membership policies. Baden-Powell Council sent the text of the resolution along with an explanatory letter, over my signature, to the National Resolutions Committee at BSA's national office. A true and correct copy of the letter and the accompanying resolution sent to the National Resolutions Committee is attached hereto as Exhibit A. The letter accurately states the facts considered by the Council in connection with its discussions of the BSA policy excluding homosexuals from membership.



3. At my request, on May 13, 1993, Baden-Powell Council sent another copy of my letter and a copy of our April 29, 1992 resolution to BSA's National Resolutions Committee. A true and correct copy of the May 13, 1993 letter from Charles Love, Council-Commissioner of Baden-Powell Council, to BSA's National Resolutions Committee is attached hereto as Exhibit B. The April 29, 1992 resolution of Baden-Powell Council has not been altered, amended or changed in any regard since it was passed.

4. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

/s/ Robert Gwinn
Robert Gwinn

Dated: January 5, 1994

Letter to National Board, BSA

I am writing to you on behalf of the Executive Board of the Baden-Powell Council, Inc. to urge you to reconsider and reverse the policy of the National Council, BSA, prohibiting homosexuals from being members of the Boy Scouts of America. While it is our intention to conform to the membership standards policy, we urge serious discussion of this issue at the upcoming national meeting in Cincinnati.

At its meeting of April 29, 1992 the Executive Board of the Baden-Powell Council passed the following resolution:

> Whereas the membership policy of the National Council, BSA excluding homosexuals from membership in the Boy Scouts of America is endangering Scouting in both the Baden-Powell Council and across the nation, therefore we urge the National Executive Board of the Boy Scouts of America to revise its policy to give responsibility for choice of membership to local Chartered Partners.

Many of our Board members are morally troubled by the BSA position. In an Executive Committee meeting on this subject, one member pointed out that the Scout Law should apply to all people, and another said that Scouting itself has taught many of us tolerance. Others are troubled by the thought of homosexual leaders.

However, we are all in agreement on the consequences the BSA position is bringing to our movement, both in our Council and nation-wide. To quote another Board



member, one who is personally uncomfortable with homosexuals as members, we are just on the wrong side of history on this issue.

First, one of the three counties that make up our rural upstate New York Council has an antidiscrimination ordinance which explicitly applies to sexual preference. That ordinance reflects a widely held community value in that county, as we found out at our Fireside Chat, where we were pushed hard for discriminating. The issue is moving toward the front burner in another county. Whatever the legal niceties, our Council will be damaged by being out of compliance with this law and this community value.

Second, one of the three United Ways which provides significant funding to us has made it clear that we are in danger of losing that funding. The head of the committee which coordinates human services in the county has protested our policies privately, and is likely to go public soon. Another United Way is becoming interested in the question. Protests are beginning in two large cities near us, and it is, we think, inevitable that we will be the subject of a major uproar here. We cannot see the gain in the National BSA's picking a fight with the United Way. That organization has been intertwined with Scouting for many years and, because of the heavy involvement of local business people, does reflect the center of community values.

Third, issues from around the country about the Learning for Life Program are beginning to surface here. Two School Districts in the area we serve are

uninterested in LFL in part because of the BSA's perceived discrimination. So far, communication on this has taken place on an informal level, but if school boards are formally confronted with the question, we might well wind up losing the access to schools which our Units now have, never mind starting the new Learning for Life programs.

Fourth, the effect on Scouting's leadership -- the issue the National BSA constantly raises -- if this policy is reversed will in fact be slight. The choice of leaders is very much a local matter, and local Units, where parents are usually in control, are unlikely to choose people whose lifestyles are widely divergent from community values concerning youth leadership.

Finally, the national BSA's position interferes with the right of the local Chartered Partner to choose its own leaders. Since the national BSA has made clear in its own child abuse prevention training that homosexuals are no more likely to abuse children than heterosexuals, the question at stake here is whether any homosexual could ever serve as a role model for youth. We believe that that question should be left up to the parents close to the situation, those that typically make up a Unit Committee under the direction of the Chartered Partner.

If something isn't done about this situation, many Councils around the country will be in a lose-lose situation, faced with losing their charters or losing local funding. In either one of these cases, the children we serve are the ultimate losers. We urge the National Executive Board to reconsider and to reverse this



policy. Furthermore, we urge the organizers of the upcoming national meeting to plan and advertise a serious discussion of this question, so that the National BSA can hear from the many Councils for which this membership policy is a problem. Our delegates will come to Cincinnati looking forward to that discussion.

Sincerely yours,

Robert Gwinn
President

[LOGO OMITTED]

BOY SCOUTS OF AMERICA

Baden-Powell Council, Inc.
2127 Dryden Road
Freeville, New York 13068
607-844-8125
607-273-0072

**RESOLUTION**

PASSED UNANIMOUSLY BY THE EXECUTIVE BOARD, APRIL 29, 1992

Whereas the membership policy of the National Council, BSA excluding homosexuals from membership in the Boy Scouts of America is endangering Scouting in both the Baden-Powell Council and across the nation, therefore we urge the National Executive Board of the Boy Scouts of America to revise its policy to give responsibility for choice of membership to local Chartered Partners.

*Serving the Youth of Cortland, Tioga and Tompkins Counties, Townships of Covert and Van Etten and Villages of Lodi and Mecklenburg*

[UNITED WAY LOGO OMITTED]



[LOGO OMITTED]

BOY SCOUTS OF AMERICA

Baden-Powell Council, Inc.
2127 Dryden Road
Freeville, New York 13068
607-844-8125
607-273-0072

TO: National Resolutions Committee, BSA

FROM: Charles Love, Council Commissioner, Baden-Powell Council

RE: Resolution on Standards of Leadership

DATE: May 13, 1993

FAX: 214-580-7878, attention Ms. Helen Ray

At the request of Council President Robert Gwinn, I am sending you a copy of a resolution passed unanimously by our Council Executive Board on April 29, 1992, for consideration at the Annual Business Meeting of May 21, 1993.

We are sending this to you again for your reconsideration, since our situation with our local United Ways grows more and more difficult. We urge you to give this matter serious thought, particularly since all we urge upon the National BSA is to allow local Chartered Partners to make their own decisions about their leadership, a tradition of the BSA since its beginnings. Our current Council President, the immediate past Council President (myself) and the person who is likely

to be our new Council President all share the view represented in this resolution, and share a sense of urgency about the need for a change in National BSA policy.

The memorandum from Mr. Clandenin asks for a brief description of the resolution's purpose. I think the text of the resolution itself, together with a copy of the letter we sent last year (enclosed) should suffice.

Thank you for your consideration. Our delegates look forward to further discussion at the National Meeting.

*Serving the Youth of Cortland, Tioga and Tompkins Counties, Townships of Covert and Van Etten and Villages of Lodi and Mecklenburg*

[UNITED WAY LOGO OMITTED]



SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY

[CAPTION OMITTED]

AFFIDAVIT OF WILLIAM A. J. KIRKNER IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

DISTRICT OF COLUMBIA ) ss.

WILLIAM A. J. KIRKNER, being duly sworn, deposes and says:

1. I reside in the District of Columbia. I make this affidavit in support of plaintiff James Dale's motion for summary judgment. I have personal knowledge of the facts set forth herein.

2. I am currently employed at Walcoff & Associates, located in Alexandria, Virginia. In my capacity as a specialized consultant for the United States Department of Energy, I review contracts and legislation and circulate briefing materials related to technology transfers at the national laboratories.

3. I attended Loyola College in Baltimore, Maryland, a Jesuit college, and was the recipient of two merit scholarships that covered my tuition in full. I graduated cum laude in 1989, after spending five semesters on the Dean's list. During my college years, I volunteered as a peer counselor, sang with the Chapel Choir, and participated in student government. Following my graduation from college, I

attended Georgetown University Law Center, from which I received a Juris Doctorate in May 1992.

4. I became a registered member of Boy Scouts of America in 1975, when I joined as a Cub Scout, and I have remained an active member of Scouting through the present. In Boy Scouts of America ("BSA"), I achieved the rank of Eagle Scout and received numerous awards -- including the Explorer Achievement Award, and the Bronze Bighorn Award, a regional award for Explorers. I also received the Ad Alteri Dei Award, an award presented by the Catholic Committee on Scouting to Boy Scouts for religious service, and the Pius XII award, a similar award presented to Explorers for religious service. To earn these religious awards, I conducted research on various religious topics, participated in discussions on religious issues, and devoted a significant amount of time to community service projects.

5. In 1985, I attended the National Scouting Jamboree and served as Senior Patrol Leader for my troop, a Boy Scout troop made up of Scouts from the Baltimore Area Council and from the Transatlantic Council. In 1985, I was also inducted into the Order of the Arrow, the honor camping association of BSA. As an Order of the Arrow member, I received the Founder's Award for outstanding service to my Lodge, and the Vigil Honor, which signified that I had attained the highest level that can be reached in the Order of the Arrow. The Vigil Honor is an honor extended only to select Order of the Arrow members who have spent at least two years in service to their Lodge after achieving Brotherhood status.



6. In the Order of the Arrow, I served as a Section Chief and as National Vice Chief for Publications. In my capacity as National Vice Chief for Publications, a position I held from 1988 through 1989, I served under the National Chief of the Order of the Arrow, and was the Chairman for all publications related to the Philmont Trek, a national Order of the Arrow event. I was also the Order of the Arrow youth representative to the National Publications Committee, a committee of BSA's National Board. As the Order of the Arrow representative to the National Publications Committee, I was responsible for participating in the revision of the Boy Scout Handbook, including the section that deals with issues of sexuality.

7. Since turning 18 and becoming an adult Scouter, I have continued to be actively involved in Scouting programs. From 1991 to November 1992, I served as a Unit Commissioner in my district, acting as a liaison between the district office and the various Scout troops throughout the district. I helped provide program support to the chartering organizations in the district, and provided the chartering organizations with information and resources from the BSA national office. These resources included publications on how to recruit a Scoutmaster, training materials for adult committee members, and explanatory information regarding recent changes to the Scouting program. I currently serve as Assistant District Commissioner in my district, and am responsible for overseeing a group of Unit Commissioners and recruiting, training and certifying additional Unit Commissioners.

8. I have recently completed the requirements for the Arrowhead Honor and the Commissioner's Key. The

Arrowhead Honor is an award for proficiency in Commissioner service, and the Commissioner's Key is an award presented to Scouters who have served as Commissioners for at least three years. I expect to receive these awards at the next Commissioners' meeting in my district, which is scheduled to be held on January 4, 1994.

9. The Scouting program offers two intensive training programs for adult Scouters -- the Wood Badge Training Course and the National Camp School -- and I have participated in both of these programs. Professional Scouters are generally expected to complete at least one of these programs during the course of their Scouting careers; volunteers often do not complete either program, and it is fairly unusual for a volunteer to have completed both of these comprehensive training programs.

10. The Wood Badge Training Course is a one-week course that trains Scouters to train others. The Scouting organization considers this program integral to becoming a first-rate leader and manager of others, both within and outside of the Scouting context. In fact, when Scouters encounter resistance from their employers regarding the time away from work that the Wood Badge Training Course requires, they are encouraged to tell their employers that the course is one of the best business and management training courses available.

11. When I attended the Wood Badge Training Course in 1992, I learned a great deal about what it means to be entrusted with the responsibility of training my fellow Scouters, and the importance of fully and accurately conveying to those whom I train the aims and purposes of



Scouting. These aims and purposes of Scouting, as I understand them and as they have been explained to me, are to cultivate participating citizens who are physically and mentally fit, and to develop young men of good moral character. Since completing the Wood Badge Training Course, I have had occasion to put my training expertise and thorough understanding of the goals of Scouting to good use: over the past two years I have conducted four Commissioner training courses and two Fast Start training courses for new Unit Commissioners.

12. The National Camp School is also a one-week training program. Whereas the Wood Badge Training Course is particularly recommended for Scoutmasters, the National Camp School is specifically tailored to train Scouters who work at Scout camps in more specialized capacities. In 1988, I first served as a summer camp staff member at Camp Spencer at Broad Creek in the capacity of Pool Director. The following year I attended the National Camp School program, which was held that year at Hawk Mountain Scout Reservation, located outside of Redding, Pennsylvania. At the National Camp School, I was certified as a Camp Program Director and as a Camp Commissioner, and I returned to Camp Spencer to serve as the Camp Program Director from 1989 through 1991. As Camp Program Director, I was responsible for recruiting, interviewing, hiring, training and evaluating summer camp staff. I also wrote a staff manual, determined staff salaries, and drew up a budget for the summer camp program.

13. In 1990 I returned to the National Camp School to serve on its staff and help train Camp Commissioners, Program Directors, and others who serve in positions of camp

management. I have been on the staff at the National Camp School each summer since 1990, and currently hold the positions of School Commissioner and Section Director for the Commissioners' Section. As Section Director, I certify those who complete the Commissioner Section of National Camp School and provide input for the development of a training syllabus. As School Commissioner, my responsibilities include maintaining health and safety standards in every aspect of the program, promoting morale among the staff and students, and counseling students who have difficulty during training.

14. As a result of having spent almost two decades in the Scouting movement, I have been able to enjoy the many benefits and privileges that accompany Scouting membership. My Scouting accomplishments and the recognition I have received from my community for my Scouting achievements have contributed to my sense of self-esteem and my confidence in my ability to tackle new and difficult problems successfully. My Scouting experience is prominently displayed on my resume, and I have discussed Scouting in countless interviews. In fact, I have often found that when a prospective employer and I have Scouting in common, this shared experience leads to a better interview and a greater likelihood of success.

15. Scouting has also enabled me and my fellow Scouters to meet other professionals who volunteer their time to Scouting, and to expand the network of people with whom we regularly interact on both a social and professional level. My staff is currently planning a February 1994 reception for Scouters who work on Capitol Hill and other government employees who are interested in becoming Scouters. This



reception will be hosted by several members of Congress, including Richard Gephardt and William Richardson, and will allow many of those attending to speak with important governmental figures whom they would not otherwise have an opportunity to meet. For non-professional Scouters, the benefits and privileges of the kind of networking that Scouting offers are even more pronounced: Scouting connections give many people the opportunity to learn about a variety of employment opportunities, and to meet people who may be helpful to them in the fields in which they work.

16. Scouting also provides invaluable leadership, organizational, and management training that can be put to good use in many contexts. I have often employed the techniques I learned in Wood Badge Training and at the National Camp School not only in my Scouting experience, but also in my career and my personal life. I have also witnessed firsthand the benefits Scouting training has provided to others. For example, I worked with a welfare mother in my District who was unable to find a job, but was enthusiastic about becoming a Scouter. This woman is now a Den Mother, and can run meetings competently and plan activities successfully. She has received recognition and awards for her progress, and has gained considerable self-confidence from her Scouting experience. As a result of the leadership training offered to her by Scouting, she has learned organizational and managerial skills that will greatly increase her opportunities for future employment outside of Scouting.

17. As an Eagle Scout, an adult leader and a professional Scouter, I have a comprehensive knowledge and

understanding of the Scouting program. I do not recall seeing any reference to BSA's policy of excluding homosexuals from membership in any materials published by BSA prior to December 1992, when Scouting Magazine and a local Council newspaper printed articles on the exclusionary policy, and all of the other BSA materials with which I am familiar remain silent on the issue of homosexuality. Neither the Scoutmaster's Handbook, nor the Boy Scout Handbook, nor the Field Book refers to BSA's policy of excluding homosexuals from membership, and nothing that I have learned while involved in the Scouting program suggests to me that sexual orientation is relevant in any way to determining eligibility for membership in Scouting. In fact, I did not learn of BSA's policy of excluding homosexuals from membership until approximately 1989 or 1990, when the policy was brought to my attention by a professional Scouter.

18. I am extremely familiar with the voluminous training materials provided by BSA's national office to its adult leaders. I have not only studied these materials, I have trained others using these materials and have participated in substantive discussions aimed at revising these materials. None of the official BSA training materials with which I am familiar refer to BSA's policy of excluding homosexuals from membership. Nothing that I have learned while involved in the Scouting program suggests to me that sexual orientation is relevant in any way to determining eligibility for membership in Scouting. In fact, the materials for teaching Scoutmaster Fundamentals -- a basic training course for Scoutmasters -- simply suggest that Scoutmasters tell their Scouts to turn to their parents for advice concerning sexual issues and values.



19. It has been my experience as participant in and leader of BSA training courses that the issue of whether homosexuals are eligible for Scouting leadership positions is never raised formally by those conducting training courses or leading Boy Scout troops. When asked directly about the policy, I have made clear that the Scouting program considers sexual conduct of all kinds -- whether heterosexual or homosexual -- inappropriate within the context of the Scouting experience. However, in other contexts, I have also made clear that I personally do not consider sexual orientation to be relevant to eligibility for membership in Scouting, and that -- as a matter of deeply held moral and ethical principle -- I would refuse to dismiss a Scout or Scouter simply on the grounds that he is gay.

20. Since 1990, I have been involved in an ongoing dialogue with professional and volunteer Scouters about my opposition to Scouting's exclusionary policy. Because I believe that this policy is directly contrary to my moral, ethical and religious duties and obligations, I have tried to work within the Scouting movement to change the policy. Recently, one professional Scouter advocated that I be ousted from Scouting because of my opposition to the policy; but I have been assured that merely voicing my opposition to a policy that I believe is unfair and unjust is not grounds for revocation of my Scouting membership.

21. As a member of Boy Scouts of America, I pledge to uphold the values set forth in the Scout Oath and the Scout Law, including the values of being morally straight and clean. Prior to 1993, no one involved in Scouting ever told me -- and no Scouting literature with which I am familiar ever

suggested to me -- that the requirement that a Scout be morally straight and clean means that a Scout cannot be gay.

22. At no time during my Scouting career prior to 1993 did anyone ever suggest to me, or did I read in any Scouting literature, that the phrase "morally straight" in the Scout Oath refers to sexual orientation or that homosexuals are not morally straight. It has always been my experience that Scouting encourages its members to formulate their own definitions of what it means to be morally straight, based on values that Scouting teaches such as truthfulness, consideration, compassion and integrity, and on each Scout's religious beliefs, which may differ significantly. I have never understood and I do not believe that sexual orientation is relevant to the requirement that Scouts be "morally straight."

23. At no time during my Scouting career prior to 1993 did anyone ever suggest to me, or did I read in any Scouting literature, that the term "clean" in the Scout Oath refers to sexual orientation or that homosexuals are not clean. During my involvement in Scouting, I have been taught that a Scout should be clean in "body and mind," and in "thought, word and deed." In this context, I understand cleanliness to mean that a Scout should be presentable and tidy, and should not use foul language or behave in a dishonorable manner. I have never understood and I do not believe that sexual orientation is relevant to the requirement that Scouts be "clean."

24. Nothing I have learned while involved in the Scouting program has taught me that sexual orientation is relevant in any way to eligibility for membership in Boy Scouts of America, or to any aspect of the Scouting program. I do not believe -- and I was never told prior to 1993 -- that



admitting homosexuals would interfere with the fulfillment of Scouting's purpose of teaching boys to uphold the values in the Scout Oath and the Scout Law, including being morally straight and clean.

/s/ William. A. J. Kirkner
William A. J. Kirkner

Sworn to before me this 30th day
of December, 1993

/s/ Dorothy V. Baker
Notary Public

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY

[CAPTION OMITTED]

CERTIFICATION OF DAVID A. RICE IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

STATE OF CALIFORNIA )
) ss.
COUNTY OF SONOMA )

DAVID A. RICE certifies:

1. I reside in Sonoma County, California. I make this certification in support of the summary judgment motion of plaintiff James Dale. I am currently employed with the National Park Service. I hold an A.B. in Education with Honors from the University of California at Berkeley. I have been married for 38 years and have four grown children.

2. I have spent 55 years in Scouting, first as a youth member and later as a professional Scouter and volunteer adult leader. Scouting has always been one of the most important parts of my life, beginning in 1938 when I became a Cub Scout in Oakland, California. As a Boy Scout, I achieved the rank of Star Scout and served as Junior Assistant Scoutmaster of my troop. As a youth, I was also active in Exploring.

3. While a young man in Scouting, I was inducted as an Ordeal member of the Order of the Arrow, the honor camping association established by Boy Scouts of America



("BSA"). I eventually achieved the rank of Vigil Honor Chair, the highest honor that the Order of the Arrow bestows on its members in recognition of exceptional service and personal effort.

4. In 1947, I became the Assistant Scoutmaster of Troop 41 in Oakland, California. In 1949, I became the Assistant Scoutmaster of Troop 30 in Oakland, California and served as its Scoutmaster during 1950 and 1951.

5. I spent the first seventeen years of my professional life as a full time, paid employee of Boy Scouts of America. From 1953 -- when I was discharged from the United States Army after serving for two years under an ROTC commission as 1st Lieutenant -- until 1970, I served as a District Scout Executive in Marin Council, Verdugo Hills Council, Sonoma-Mendocino Area Council and Sequoia Council, all in California.

6. After leaving the Scouting profession, I earned a credential as a teacher in the State of California and taught elementary school from 1971 to 1986. Since 1986, I have been employed with the National Park Service as secretary and Park Ranger, and am currently Editorial Assistant, in the Golden Gate National Recreation Area.

7. Although I have not held any professional Scouting positions since 1970, I have continued to be active in Scouting. I was a Pack Committee member, and later Webelos leader, of Pack 101, Petaluma, California, from 1970 to 1972. In 1972, I became the Troop Committee Chairman of Boy Scout Troop 74, Petaluma, California. In 1973, I became the Assistant Scoutmaster of Troop 74, and I served as that Troop's Scoutmaster from 1977 to 1979 and

from 1980 to 1992. Since 1992, I have been an Assistant Scoutmaster in Troop 74.

8. I have been honored for my commitment to the Scouting program. Among the most prestigious honors I received are the Order of Merit for outstanding service to boys, presented to me in 1987 by the Miwok District of Sonoma-Mendocino Area Council, and the Silver Beaver, presented to me in 1991 by the Sonoma-Mendocino Area Council, also for outstanding service to boys.

9. Scouting has provided me with innumerable financial and non-financial benefits. Aside from providing me with a livelihood for sixteen-and-a-half years, my Scouting experiences provided me with tools that I have employed throughout my professional life. For example, Scouting provided me with training which enabled me to lead the outdoor environmental education program at the school where I taught. Scouting gave me experience working with young people which I, in turn, have used in working with youth groups at the National Park Service. Scouting also gave me practical experience upon which I have drawn in editing publications and in working in public affairs at the National Park Service. Scouting also taught me personnel and other management methods that I have used, for example, to recruit a Superintendent for the Sunday School at the church where my family worships. Moreover, Scouting has been an important stabilizing factor in my life. Scouting has given me peace of mind and kept me on an even keel in troubled times.

10. During my more than 45 years as an adult volunteer and professional in Scouting, I completed numerous training



programs, including training for District Scout Executives at the National Training School of Boy Scouts of America, Wood Badge training and Scoutmaster training.

11. I am intimately familiar with the policies of Scouting. From 1938 until approximately 1980, I was not aware that BSA had a policy or practice of excluding homosexuals from membership. No one involved in Scouting ever told me that such a policy or practice existed, nor did I ever read about such a policy or practice in materials provided to me by BSA.

12. I did not learn during any of the training sessions I attended -- including training for District Scout Executives at the National Training School of BSA, Woodbadge Training or Scoutmaster training, or at any time while a professional Scouter or an adult volunteer, that homosexuals were not eligible for membership in Scouting, either as youths or adults. I never received any communications from BSA while employed as a District Scout Executive informing me that homosexuals were not eligible for membership in Scouting. I never learned anything while I was employed as a professional Scouter, or while I was an active youth or adult volunteer in Scouting, that suggested to me that homosexuals should not be eligible for membership in Scouting.

13. The purposes of Scouting, as I have come to understand them over the course of my more than 50-year involvement, are teaching young people outdoor and camping skills, developing their leadership abilities and sense of community responsibility, and providing them with the tools to make ethical choices over the course of their lives. I have

never known the exclusion of homosexuals from membership to be one of the purposes of Scouting; nor do I believe that this exclusion furthers any purpose of the Scouting program.

14. In about 1980, I learned through media reports that Timothy Curran, a California resident, was excluded from Scouting because it became known that he is gay. This was the first time, in the more than 40 years since I had first joined Scouting, that I learned that BSA had a practice of excluding homosexuals from membership. At the time, I was a Scoutmaster in California and was asked numerous questions by parents and others about Mr. Curran's exclusion. No one at any level of Scouting would make any official statements to me about BSA's practice or policy of excluding homosexuals. Because there had never been any mention of the practice of excluding homosexuals in The Boy Scout Handbook, The Scoutmaster Handbook or any other materials generally available to Scouts or Scouters, I was forced to rely upon newspaper and other media reports -- rather than any material or other information produced by BSA -- in answering those questions.

15. Since 1992, I have made a significant effort to gather information about the practice of excluding homosexuals from Scouting, but have learned essentially nothing from official Scouting sources. I wrote to the Regional Director of the Western Region of BSA requesting written materials regarding the policy, but was only referred to Blake Lewis, a national media spokesperson for BSA. On numerous occasions, I have requested information regarding the policy, both verbally and in writing, from my local and District Scout Executives. I have never received any meaningful response.



16. As I understand them, the words "morally straight" in the Scout Oath are not susceptible to a precise interpretation applicable to all Scouts. A Scout must apply his own personal beliefs in determining what is "morally straight." Thus, the requirement that a Scout be "morally straight" means different things to different Scouts. Some concepts, such as honesty, would be included within any Scout's definition of "morally straight." However, many other standards of morality vary among Scouts. For instance, while millions of Scouts drink tea, coffee or cola without any concern that such acts are immoral, a member of the Mormon Church would probably conclude that drinking coffee is not "morally straight" because Mormon religious beliefs teach that it is wrong to ingest caffeine.

17. A Scout's religious beliefs are important in helping him to interpret the meaning of "morally straight." The discussion in The Boy Scout Handbook of the requirement to be morally straight counsels a Scout to "be . . . faithful in [his] religious beliefs." However, Scouting does not require its members to belong to any particular religion or adhere to a specific set of religious norms. Scouts are Catholic, Protestant, Muslim, Jewish and Buddhist, and each one follows his own religious beliefs.

18. Because a Scout's personal religious beliefs form an important aspect of his definition of "morally straight", all Scouts are not in agreement that homosexuality is inconsistent with the pledge to be morally straight. Although some religions teach that homosexual activity is immoral, many do not. As an Elder of the Presbyterian Church, my religious beliefs do not lead me to understand homosexuality as immoral. It is an essential part of my religious faith that Jesus taught us to love and accept others regardless of their differences and to treat others fairly and with

justice. I believe that my religion teaches that these precepts apply equally to all people. Therefore, it would be inconsistent with my religious values to believe that a homosexual could not be "morally straight" within the meaning of the Scout Oath.

19. During my entire 55-year experience with the Scouting program, I have never been told that the term "morally straight" in the Scout Oath refers to sexual orientation, or that homosexuals are not morally straight. I have never understood and have never known other Scouts to understand "morally straight" to refer to a specific set of moral values.

20. I have never been told that the term "clean" in the Scout Law refers to sexual orientation or activity of any kind, or that homosexuals cannot be "clean" within the meaning of the Scout Law. I have always understood and thought that other Scouts understood the term "clean" to refer primarily to cleanliness of mind and body. My understanding has been that "cleanliness of mind" means that a Scout should not use foul language or think unkind thoughts about others. In all my years in Scouting -- including my years as a professional Scouter and an adult leader -- I have never interpreted the term "clean" in the Scout Law to refer in any way to sex or sexuality, and I have never been aware of any other Scout or Scouter who interpreted "clean" in the Scout Law to refer in any way to sex or sexuality.

21. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

/s/ David A. Rice
David A. Rice

Dated: December 23, 1993



SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY

[CAPTION OMITTED]

AFFIDAVIT OF ROBERT L. SMITH, JR. IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

STATE OF CALIFORNIA )
) ss.
COUNTY OF SANTA CLARA )

ROBERT L. SMITH, Jr., being duly sworn, deposes and says:

1. I reside in Santa Clara County, California. I make this affidavit in support of the summary judgment motion of plaintiff James Dale. I am currently self-employed as a computer software engineer. I hold a B.A. and a Ph.D. in Philosophy from Stanford University. I have been married for 22 years and have four children.

2. I first became a registered member of Boy Scouts of America ("BSA") in 1953 as a Cub Scout with Tall Corn Area Council in Des Moines, Iowa. I continued my involvement with Scouting as a Boy Scout and Explorer Scout until 1961. As a youth, I achieved the rank of Eagle Scout, was awarded the God and Country Award, and was elected to the Brotherhood of the Order of the Arrow, the honor camping association established by Boy Scouts of America. During my youth membership in Scouting, I also held various offices in my Scout Troop and Explorer Post.

3. I never heard and am not aware of any discussion about homosexuality that occurred during any Scouting meeting or function in which I participated throughout the period in which I was a youth member of BSA. No one ever said that homosexuals could not be Scouts, or that homosexuality was immoral or in any way inconsistent with the principles of Scouting. None of the materials that I received and reviewed as a youth in Scouting ever mentioned the subject of homosexuality.

4. As a Scout in the late 1950's and early 1960's, I learned tolerance and acceptance of others; the Scouting principles of tolerance and diversity were important to my personal development. Scout leaders made a great issue about how all boys were welcome to join the program, and I remember frequently hearing that "Scouting is for everyone." It was at Boy Scout camps that I first met boys of other races and religions; the first Catholic friend I ever had I met at Camp Mitigwa in Central Iowa.

5. I returned to Scouting in the 1980's, first as a parent and then as an adult leader. My older son, David, became a Cub Scout in 1985 and a Boy Scout in 1987. My wife and I recently experienced one of our my proudest moments as parents when we attended the Court of Honor ceremony at which David advanced to the rank of Eagle Scout. I became an Assistant Scoutmaster of a troop in the Stanford Area Council in 1988, and my wife became a Merit Badge Counselor in 1991. My wife and I currently hold those positions.

6. Throughout this period, my family and I were very involved in Scouting. I attended many campouts and Council



functions, including the Scout camp at Camp Oljato. During some weeks, I attended Scout meetings nearly every night of the week. I talked to many other parents about their sons' participation in Scouting, and encouraged many to join the Scouting program. Although as a volunteer I do not receive monetary renumeration for the time I put in to Scouting, the leadership experience and recognition and respect in the community that adult volunteers in Scouting receive more than compensate for that time. In encouraging others to join the Scouting program, BSA officials constantly stress the magnitude of these non-financial benefits. There may be expenses involved in being an adult volunteer, but I have never known an adult volunteer in Scouting who did not feel that the non-financial rewards of Scouting greatly outweighed those costs.

7. As an adult leader, I received formal training and various training materials from Boy Scouts of America, including The Scoutmaster Handbook. On the issue of sex, The Scoutmaster Handbook, states:

> Accept all youth as they are. Your acceptance will reassure them that they are normal. Remember the differences between youth when you plan Scouting activities . . . . Be accepting of their concerns about sex. Be very open and clear when talking with them.

The Scoutmaster Handbook (1990 ed.) at 154-55. True and correct copies of pages from Scouting publications referred to in this affidavit are attached hereto as Exhibit A. Similarly, Scoutmastership Fundamentals states that:

> Scouting believes that boys should learn about sex and family life from their parents, consistent with their spiritual beliefs.

Ex. A. Scoutmastership Fundamentals (1991 ed.) at 98. I always understood these statements to mean that Scoutmasters should respond openly and honestly to specific questions about sexuality, but refer Scouts to their parents for training in this area because sex is not a part of the Scouting curriculum.

8. In addition to reading various training materials, in 1989 I attended the "Troop 101" training sessions conducted by Boy Scouts of America for new adult leaders. Although the training included components about the history, operation, and policies of Scouting, I recall only two discussions relating to sex at these sessions: (1) we were taught how to deal with accusations of child abuse, and how to protect ourselves from unjust accusations; and (2) we were told to avoid any discussion of sex or sexuality with Scouts since this was the responsibility of a parent, school, or church, and not a Scouting responsibility. There was no mention of homosexuality or of the policy of excluding homosexuals from membership during these training sessions.

9. Prior to September 1991, I never heard any mention whatsoever of homosexuality during any Scouting function in which I participated. I was never told, and was not aware, that homosexuals could not join Scouting, or that homosexuality was inconsistent with any purpose of Scouting.

10. In September 1991, I received a copy of the Scouter's Log from the Stanford Area Council stating that



homosexuals were not eligible to be members or leaders of Scouting because they were not "morally straight" and were not good role models. I was completely shocked at this statement because it was the first I had ever heard of such a policy in my nearly forty years as a Scout or as an adult leader. The policy of excluding homosexuals from membership completely contradicts everything I know about Scouting and goes against the principles of diversity and tolerance that I was taught as a boy. Thirty years earlier, I was always told that "Scouting was for everyone."

11. In the more than two years since I first learned about the policy, I have read a number of books about the history of Scouting. I have learned a lot about changes in Scouting policy concerning race, religion and handicapped youth, as well as the philosophical background of "Scouting values." There is no discussion of homosexuality in any of these materials, and none of these histories state that it is a purpose of Scouting to exclude homosexuals or to teach that homosexuality is immoral. In my research, the earliest document that I found that states a policy position about excluding homosexuals from membership in Scouting is dated 1978. This document was not among those provided to me during my time as an adult leader and, in fact, was difficult for me to obtain. (This document, dated March 17, 1978 and addressed to "Executive Committee Members," is the same document attached as part of Exhibit A to the affidavit of P. Karl Rowley, submitted by Boy Scouts of America in opposition to James Dale's motion for summary judgment.)

12. As a trained adult leader, I am responsible for teaching Scouting ideals. These ideals are not a complex set

of legalistic requirements, but rather simple concepts such as "loyal" and "thrifty." Scouting teaches young boys that these principles mean different things to different Scouts. A version of the Socratic method is often used to discuss these Scouting values: individual Scouts are asked to share with their Troop how they regard or interpret the Scout Oath or Scout Law with respect to some real-life situation or dilemma. For example, I once conducted a discussion among Scouts (in a "Scoutmaster's Minute" at the end of a meeting) about the goal of being "thrifty." The ensuing discussion raised a number of substantively different interpretations of thriftiness, some of which were probably inconsistent. Nevertheless, each of the Scouts had something relevant to say about thriftiness, even though there was not complete agreement and no definitive interpretation could be reached.

13. The concept of "morality" is certainly far more complex than the concept of "thriftiness." As Scoutmastership Fundamentals teaches, the emphasis in defining morality is not on any fixed set of ideas, but rather on "what the boy is himself: his personal qualities, his values, his outlook." Ex. A, Scoutmastership Fundamentals (1991 ed.) at A-12 (emphasis added). Similarly, The Scoutmaster Handbook recognizes that "Older Scouts may begin to develop a personal philosophy of life, re-evaluating values and standards. . . . [They] combine advanced thinking ability with feelings and are able to see good and bad as relative, not absolute." Ex. A, The Scoutmaster Handbook (1990 ed.) at 156 (emphasis added).

14. Although I personally believe that homosexuality is not inconsistent with the requirement that Scouts "be morally straight," I recognize, that there are people in Scouting who



disagree with me, in part because their own religions teach that homosexuality is immoral. However, Scouting's definition of "morally straight" does not include a particular set of beliefs for all Scouts. Like all the values taught in Scouting, the most important thing about the "morally straight" requirement is the idea that each Scout formulate, understand and adhere to his own moral and religious beliefs. Thus, The Boy Scout Handbook, in setting forth the guidelines for what is "morally straight" states:

> To be a person of strong character, guide your life with honesty, purity, and justice. Respect and defend the rights of all people. Your relationships with others should be honest and open. Be clean in your speech and actions, and faithful in your religious beliefs. The values you follow as a Scout will help you become virtuous and self-reliant.

Ex. A, The Boy Scout Handbook (1990 ed.) at 550.

15. The Scout Oath has always recognized a "duty to God." However, because of Scouting's commitment to diversity, tolerance and respect for others, Scouting does not require its members to belong to any particular religion or adhere to a specific set of religious beliefs. In fact, Jewish, Moslem, Buddhist, Protestant and Catholic members of Scouting all pledge the same oath to fulfill a "duty to God." Struggles throughout the history of the organization have established the importance of tolerance for diverse religious beliefs and have led to the decision not to establish any particular religion or religious-based view within Scouting; all that is required of a Scout is that he follow his own religious beliefs.

16. Therefore, although particular religions may take a stand on sexual issues such as abortion, contraception, premarital sex, adultery and homosexuality, it has always been my understanding that Scouting does not. Rather, Scouting leaves these issues to be dealt with by Scouts, their families, and their religions.

17. The many religions that support Scouting have diverse views about sexual matters, including homosexuality. I am aware that at least two of these religions -- Unitarianism and Reform Judaism -- have publicly requested that Scouting change its policy of excluding homosexuals because they do not consider homosexuality immoral. It is my understanding that other denominations -- including the Lutherans, the United Church of Christ and the Quakers -- similarly do not teach that homosexuality is immoral. Therefore, the policy of excluding homosexuals from membership cannot derive from the requirement that Scouts be faithful to their own religious beliefs because Scouts who are members of these denominations would not conclude that homosexuality is inconsistent with their duty to God or their oath to be morally straight.

18. Although the policy of excluding homosexuals from Scouting is now generally publicized in the press, there is still no discussion of homosexuality at Scout meetings, no mention of homosexuality in the Boy Scout Handbook, and no reference to the policy regarding homosexuals in the membership application or in any other materials that are provided to potential leaders or members of Scouting.

19. I have tried unsuccessfully to initiate discussions of this issue at meetings of the general adult leadership of the



Stanford Area Council. In fact, my wife and I met with the Council executive and five members of the board to propose that we should have a task force to discuss homosexuality and how it relates to Scouting, but were told that homosexuality will not be discussed because it is not a "Scouting issue."

20. Members of my troop and my local council know of my objections to the policy of excluding homosexuals and are aware of the following statements I have made:

A. I do not believe that homosexuality is immoral or incompatible with the Scout Oath or Law.

B. I believe that Scouting should be trying to eliminate discrimination based on sexual orientation.

C. While I will not raise the issue of homosexuality in a Scouting context (i.e., with the Scouts), if a Scout were to ask me if I think that homosexuality is immoral, I would answer that I do not believe so. I would then refer the Scout to his parents for further discussion.

D. If a Scout comes to me and expresses a concern about his sexual orientation or confides in me that he is homosexual, I will not seek to have that Scout expelled from Scouting as long as his conduct within Scouting is appropriate.

E. I will continue to publicly oppose the policy of excluding homosexuals from membership in Scouting and to try to change the policy from within Scouting.

21. I have received some agreement and support for the stands that I have taken in opposition to the exclusion of homosexuals from Scouting. While some people have disagreed with me, no one has accused me of violating the Scout Oath or Scout Law in any way, and no one has suggested that I should leave Scouting because my beliefs are incompatible with the principles of Scouting. I have been assured by everyone with whom I am involved in Scouting that I am welcome to express my views on this issue and to try to "change Scouting from within."

22. Despite my open opposition to the Scouting policy of excluding homosexuals from membership, I have been asked to continue in my role as an adult leader in Scouting. No one in Scouting has ever questioned whether I would be an appropriate role model for young Scouts in light of my opposition to the policy. In fact, I was asked earlier this year by an executive of the Stanford Area Council if I would take on an additional leadership role as Order of the Arrow lodge advisor, despite my public stand against the exclusion of homosexuals.

/s/ Robert L. Smith Jr.
Robert L. Smith, Jr.

Sworn to before me this
3rd day of January, 1993.

/s/ Carol Ann Brewer
Notary Public



SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY

[CAPTION OMITTED]

AFFIDAVIT OF DR. BRYANT L. WELCH IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

STATE OF MARYLAND )
: ss.:
COUNTY OF MONTGOMERY )

DR. BRYANT L. WELCH, being duly sworn, deposes and says:

1. I reside in Potomac, Maryland. I am Senior Policy Advisor to the American Psychological Association (the "APA"). I submit this affidavit in support of plaintiff James Dale's motion for summary judgment generally, and, in particular, to respond to the Certification of Dr. Ricky L. Slavings in Support of Defendants' Cross-Motion for Summary Judgment, dated October 26, 1993. The facts stated herein are within my personal knowledge or have been obtained through my review of materials widely disseminated by the APA. I am professionally qualified to testify to all of the matters set forth herein.

Educational, Professional and Personal Background

2. I have extensive professional experience with gay men and lesbians and adolescents with an emphasis on small group dynamics. I received my B.A. from Harvard University in 1968, my J.D. from Harvard Law School in 1972 and my

Ph.D. in Clinical Psychology from the University of North Carolina in 1976.

3. In my professional work over the past twenty years, I have had extensive experience in the psychology of adolescence and homosexuality as well as small group interaction and dynamics. I have rendered extensive clinical psychological services for the treatment of adolescent and gay patients in both private practice -- from 1976-1986 -- and as the Director of Training and staff psychologist at the University of North Carolina's Student Health Service -- from 1976-1982. I also taught for six years as a Clinical Assistant Professor in the University of North Carolina's Department of Psychiatry. Approximately 10-20% of all of the patients I have treated in my ten years of private practice have been adolescents. The types of adolescent problems that I have addressed include, but are not limited to, conflicts with parents and other family discord, poor school grades, depression, anxiety, drugs and sexual problems. I also worked with adolescents from 1973-1975 at Umstead Hospital Adolescent Unit -- an in-patient facility in Butner, North Carolina -- where I provided long-term intensive psychotherapy services, including the treatment of anxiety, depression and sexual identity disturbance. From 1973-1974, I taught classes on small group process. The goal of these classes was to teach my undergraduate students which psychological variables shape behavior patterns in small groups. Throughout the past twenty years, I have kept abreast of scholarship, studies, teachings and critiques in my areas of expertise through extensive reading of professional journals, studies and other literature. My curriculum vitae, which sets



forth in greater detail my professional experience and publications, is attached as Exhibit A.

4. I agree with the professional opinion of Dr. Slavings that values can be transmitted in small group settings.

5. Like Dr. Slavings, my professional opinions regarding small group interaction and dynamics are based on my review of academic research and studies, and my extensive experience as an observer and participant in small group interactions, specifically, my twelve year involvement as an adult in youth baseball leagues. In addition, I have also relied on my broad-based clinical work in a variety of settings.

6. I was a member of Boy Scouts of America ("BSA") from the age of 8 until the age of 13. I received my First Class Badge and was a member in good standing throughout my years in Scouting.

Socialization of Values in Youth Baseball

7. I spent the better part of my youth involved in youth baseball leagues. Youth baseball was an important influence on my development and to this day I credit my experiences in youth baseball with making me the person I am today.

8. As an adult I became involved in youth baseball leagues as a father, as a Coach, and as a trained observer. I have been involved with youth baseball programs for significant periods of time over the last twelve years. For the first four to five years of this period, I participated as a parent actively involved in watching my older son, Lucas, take part in youth baseball. I have coached various teams in little league baseball programs over the last seven to eight years,

including: (i) coaching three years for the Durham County Southwest Athletic Association in Durham, N.C.; and (ii) coaching four to five years for the Montgomery County Baseball Association in Potomac, Maryland. I am currently the Baseball Chairman for the Potomac Valley American Athletic Union and a member of the Baseball Coaches of America.

9. Like Scouting, youth baseball leagues instill norms and values -- ideas about what is right and what is wrong -- in young boys. These norms and values are not set forth in any oath or law, and young boys take no pledge in joining a youth baseball league, but value transmission is strong nevertheless. Where Scouting and other organizations have oaths and laws, youth baseball leagues have a variety of formal and informal rules and regulations to which the boys are subject.

10. The rules in youth baseball are very similar to the rules in Scouting. A member of a youth baseball league must be honest, must be loyal to his team and his teammates, must be helpful and friendly, must respect others, must be courteous and kind to other boys and adults involved in the league, and must obey the Coach and other adult volunteer leaders.

11. Youth baseball is similar to Scouting in another respect. Just as Scouting is about more than learning how to tie a knot and pitch a tent, youth baseball is about more than learning how to swing a bat and pitch a ball. The purpose of youth baseball is to teach young boys about citizenship, teamwork, leadership skills, sportsmanship, diligence and the values that all of us should live by.



12. Within youth baseball leagues, coaches and other youth members influence the development of a youth member's norms, values, identity and sense of self, which, in turn, influence his conduct. The members of youth baseball leagues, like youth members in Scouting, are at an age where their norms, values and identities are susceptible to change and influence.

13. Like the Scoutmaster in Scouting, the Coach in youth baseball occupies a prominent role in reinforcing norms and values. Youth baseball players and their parents often look to the Coach for guidance and support and value training. More often than not, the Coach becomes a friend and leader to the boys, and provides an adult role model outside of the home and school.

14. Boys who participate in youth baseball understand that if they do not abide by the rules -- not just the formal rules of baseball so much as of the rules of citizenship and team play -- they will face some formal or informal sanction, including, in the extreme, being deprived of the privilege of playing in the league.

15. The groups in which youth league baseball take place are small, intimate, primary groups as these terms are defined in Dr. Slavings' certification at paragraph 8. These groups (a) have relatively few members -- teams are generally made up of twelve to fifteen boys between the ages of seven and thirteen and one or two adult leaders, (b) have a relative degree of permanence -- boys often remain with the same league team throughout their participation in youth league baseball, (c) are characterized by face-to-face interaction among its members, and (d) have a sense of group purpose.

Youth can find no greater sense of group purpose than they find in a team sport.

16. Youth baseball leagues are powerful agents of socialization. Like in Scouting, reinforcement and socialization occurs in youth baseball through the processes of role modeling, normative advocacy, rhetorical reflection, and labeling and identification, as these terms are defined in Dr. Slavings' certification at paragraphs 11-14.

17. A Coach is a role model and an educator. He advocates the specific norms and values to youth league members that he wants them to adopt. Over time, these values and norms are reinforced in the boys through this process. These values and norms are further reinforced by engaging in the sport of baseball, with its requirements of teamwork and cooperation. Young boys who participate in youth baseball leagues proudly wear the label of a team player and internalize and identify with the values inherent in the sport.

18. Parents enroll their children in youth baseball leagues not simply so that their children will learn how to play better baseball, but for the purpose of building character and instilling moral values. Membership in a youth league is not merely a ticket onto a baseball field, it is a ticket to teamwork, camaraderie, friendship, education and personal challenge.

Effect of Gay Adult Leaders on Scouts

19. I agree with Dr. Slavings that the ability of a small group to transmit a given set of norms and values would be interfered with if the group's leaders did not transmit those norms and values. I also believe that when the size of a group



increases, there is a decrease in the ability of the group to transmit norms and values. Where my professional opinion differs from that of Dr. Slavings, is on the issues of whether a person's sexual orientation is a value or norm, whether it is therefore transmittable, whether gay men are more likely to be "immoral" and "unclean" under the Scout Oath and Law and whether gay men are therefore less able to instill the values and norms embodied in the Scout Oath and Law than are heterosexuals.

20. In my ten years of private practice and in my experience as the Director of Training and staff psychologist at the University of North Carolina, I frequently provided psychotherapy services to gay men and lesbians. They comprised approximately 20% of all my patients over this time period. Homosexual patients sought treatment on problems afflicting the population at large -- including anxiety, depression and concerns with studying -- and problems uniquely affecting gay men and lesbians -- including whether to reveal their homosexuality to peers and how to cope with being targets of frequent discriminatory attacks.

21. I have been asked to give the expert opinions rendered herein -- that homosexuality is not a matter of moral depravity or mental illness, nor a matter of choice -- in many public fora. I have also appeared before the American Bar Association to discuss discrimination against gay men and lesbians.

22. It is my professional opinion that: (1) homosexuality is not a form of sexual deviation or a mental disorder; (2) sexual orientation is not a value, a norm or determined in

any way by a person's morality and cannot be transmitted from adult to child; (3) sexual orientation is highly resistant to change; (4) there is no correlation between sexual orientation and morality; and (5) the existence of openly gay adult leaders in Scouting will not affect the sexual orientation of youth members in Scouting or affect the program's ability to transmit its norms and values to Scouts.

23. Homosexuality is not a form of sexual deviation or a mental disorder. Homosexuality has not been considered a form of sexual deviation or mental disorder by the mental health profession for approximately twenty years. The American Psychiatric Association removed homosexuality from its list of mental disorders in 1973; two years later, the APA passed a resolution supporting this action. Empirical research and professional norms do not support any correlation between a person's sexual orientation and his psychological adjustment or maladjustment. Homosexual orientation implies no impairment in judgment, stability, reliability or general social and vocational capabilities.

24. Largely from my experience treating homosexual patients, I have realized that sexual orientation is not a value or a norm, is not determined in any way by a person's morality and cannot be transmitted from adult to child. It has been my experience that homosexuality is not a function of maladaptive parenting or role modeling. I have reviewed summaries of studies which indicate that the incidence of homosexuality are the same across different historical eras, countries, cultures, societal standards, religious beliefs and childhood upbringings. Research indicates that gay men and lesbians do not differ in significant ways from heterosexuals except in terms of their sexual orientation.



25. There have been many studies on the effects of a role model on a child. Several studies have concluded that no evidence exists that having a gay role model is harmful to the child, nor does it influence the child's sexual orientation or create personal sexual conflicts or confusion for the child.

26. Sexual orientation is highly resistant to change. Sexual orientation is set in place very early on in the life cycle -- even before birth according to many. I have had experiences with many patients who, because of prevailing prejudicial attitudes and stereotypes, desperately wished to change their sexual orientation but were unable to do so. Research findings suggest that efforts to "repair" homosexuals are nothing more than social prejudice garbed in psychological accouterments. Even those rare therapists who believe that sexual orientation can be altered believe that the process required involves extensive therapy and conditioning and cannot be attained by merely changing role models.

27. According to the APA, there is no correlation between sexual orientation and morality. Homosexuality is a status. Homosexuality is not a function of morality; it does not increase or decrease with any particular moral code or set of social or moral attitudes. Studies have demonstrated that gay men and lesbians have as high a moral code as heterosexuals. As BSA has acknowledged, studies have also shown that a gay man is less likely to molest young children than a heterosexual man. This is not surprising because molestation is not a crime caused by one's sexual orientation; rather, it is a crime of dominance which arises when a person has difficulty with appropriate human intimacy.

28. Many private corporations and other entities have adopted nondiscriminatory policies based on sexual orientation with no apparent disruption to the organization. In fact, allowing gay men into BSA would have beneficial effects on Scouts. Being exposed to diversity promotes psychological growth and will assist the adolescent's development. Studies have indicated that exposing heterosexuals to truthful information about gay men and lesbians often reduces homophobia and discrimination.

29. As a psychologist, it is my opinion that the existence of openly gay adult leaders in Scouting will not affect the sexual orientation of boys participating in Scouting or affect the program's ability to transmit its norms and values to Scouts.

/s/ Bryant L. Welch
Dr. Bryant L. Welch

Sworn to before me this 4th
day of January, 1994

/s/ Mina Vrajesh Patel
Notary Public



SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY

[CAPTION OMITTED]

## CERTIFICATION OF CHARLES ALBERT WOLFE

STATE OF FLORIDA )
) ss.
COUNTY OF PALM BEACH )

1. I, Charles Albert Wolfe, reside in Palm Beach County in the State of Florida. I make this certification in support of the summary judgment motion of plaintiff James Dale.

2. I first became a registered member of Boy Scouts of America ("BSA") as a Cub Scout in 1970. I became a Boy Scout in 1974 and an Explorer in 1978. I continue to be a registered member of BSA at the present time.

3. As a Boy Scout, I achieved the rank of Eagle Scout and became a Brotherhood member of the Order of the Arrow. I held many different leadership positions in the Boy Scout troops of which I was a member, including Patrol Leader, Assistant Senior Patrol Leader, Quartermaster, Leadership Corps member, Junior Assistant Scoutmaster and Assistant Scoutmaster.

4. In 1978, while still a Boy Scout, I also joined an Explorer post, in which I attained the positions of Post President and Chairman of the Explorer Presidents Association for the Suwannee River Area council.

5. In January 1980, I became the Explorer Chairman for Area 6 of the Southeast Region, Boy Scouts of America, and was responsible for overseeing the Exploring programs throughout that geographical territory. During my time as Explorer Chairman, I organized two statewide Exploring conferences, one for training Explorer Post leaders and the other for the purpose of electing leaders and nominees to the National Explorer Presidents Congress.

6. In 1981, the National Explorer Presidents Congress elected me National Explorer President, the highest elected youth position in Scouting. I served in this position for a term of one year.

7. During my tenure as National Explorer President, I acted as the principal youth representative of Scouting, speaking at numerous meetings of chartering organizations and other groups across the United States, and appearing frequently in newspaper articles and on television. I often spoke about the meaning and significance of Scouting and described what Scouting had taught me and what Scouting has to teach others: values, independence, and practical skills. I also spoke about the Exploring program, and the early career experience it had afforded me.

8. While National Explorer President and until 1983, I served as a voting member of the National Executive Board of BSA, representing the perspective of BSA youth members. As a Board member, I helped adopt BSA policies and procedures, and served on several committees of the National Executive Board, including the Exploring Committee and the Relationships Committee.



9. As part of the celebration of the Diamond Jubilee Year of BSA, I travelled the country from May 1985 to August 1985 with the "Heritage Campfire Caravan." The Caravan travelled to approximately 40 state capitals, ending up at the National Boy Scout Jamboree in Fort A.P. Hill, Virginia, an event geared towards promoting the value of Scouting, and the largest camping event for youth in the world. I was one of just four youth members of BSA selected to accompany the Caravan and was `chosen to be the principal youth spokesman to the media. Throughout the tour, I spoke to reporters about the history, purposes and values of Scouting, and I appeared in newspaper articles and on television in virtually every city visited by the Caravan.

10. From approximately 1985 to 1991, I served as an Assistant Scoutmaster of a troop chartered by Trinity United Methodist Church in Palm Beach Gardens, Florida. I am a member of this Church, and during 1991 and 1992, I served as Scouting Coordinator of the Church, overseeing the Church's sponsoring of a Cub Scout pack, a Boy Scout troop, an Explorer post, a Varsity Scout team and a Girl Scout troop. In connection with my role as Scouting Coordinator, I served as a voting member of Gulf Stream Council, Boy Scouts of America.

11. While occupying the aforementioned leadership positions, I gained a detailed familiarity with the policies and procedures of BSA. Despite this familiarity, however, until approximately 1985 I was completely unaware that BSA had any policy prohibiting membership in BSA on the basis of sexual orientation. No one involved in Scouting ever told me that such a policy existed, nor did I ever read about such a policy in materials provided to me by BSA. Nothing that I

have learned while involved in the Scouting program suggests to me that one's sexual orientation is relevant in any way to determining whether someone is eligible for BSA membership.

12. I have never understood it to be one of the central purposes of BSA or the Scouting program to exclude anyone from membership on the basis of sexual orientation. Rather, throughout my Scouting career I have understood the central purposes of Scouting to be teaching young people outdoor and camping skills, developing their leadership abilities and sense of community responsibility, and providing them with the tools to make ethical choices over the course of their lives. My understanding has always been that BSA advocated a policy of inclusion, and strove to make its programs available to everyone.

13. In approximately 1985, several years after my term as National Explorer President and my service on the National Executive Board, I learned that the national office of BSA claimed to have a policy of excluding homosexuals from membership. I did not learn of this policy from fellow BSA members, but instead read about it in a newspaper article about a lawsuit involving BSA. My initial reaction upon learning of the policy was surprise, because nothing I had learned about the meaning of being a good Scout suggested that homosexuals could not be good Scouts, or, for that matter, that sexual orientation was in any way relevant to Scouting.

14. The moral values I learned as a Boy Scout and tried to impart to others as a BSA leader and public spokesman were essentially based on the points of the Scout law. In my



Scouting experience I both learned and emphasized to others the importance of trustworthiness, honesty, integrity, independence, compassion, and commitment. I was never taught that issues of sex and sexuality had any place in Scouting's definition of morality, and in my leadership roles I have never suggested that they do. The morality that I learned during my time with BSA and imparted to others as a Scout and a leader -- particularly, the requirement that a Scout be trustworthy -- is entirely neutral with respect to sexuality. The values that BSA taught me can guide the lives of homosexuals and heterosexuals equally.

15. During the period that I occupied the leadership positions in Boys Scouts and Exploring described above, I was never told that the phrase "morally straight" in the Scout Oath referred to sexual orientation or that homosexuals were not "morally straight." I never understood and never knew other Scouts to understand "morally straight" to refer to any moral values other than those which the Scouts actively teach, such as trustworthiness, honesty, integrity, independence, compassion, and commitment.

16. During the period that I occupied the above-described leadership positions, I was never told that the term "clean" in the Scout Oath referred to sexual orientation or activity of any kind, or that homosexuals could not be "clean" within the meaning of the Scout Law. I always understood and thought that other Scouts understood the term "clean" in the Scout Law to refer primarily to cleanliness of mind and body. My understanding was that "cleanliness of mind" meant that a Scout should not use foul language or idly think ill thoughts about others. I never interpreted the term "clean" in the Scout Law to refer in any way to sex or sexuality, and I

was never aware of any other Scout who interpreted "clean" in the Scout Law to refer in any way to sex or sexuality.

17. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

/s/ Charles Albert Wolfe
Charles Albert Wolfe

Dated: August 30, 1993



SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MONMOUTH COUNTY

Civil Action No. Mon L 5373-92

JAMES DALE,

Plaintiff,

v.

THE BOY SCOUTS OF AMERICA
and THE MONMOUTH COUNCIL,
BOY SCOUTS OF AMERICA,

Defendants.

DEPOSITION OF CHARLES D. BALL
MARCH 18, 1993

(excerpts)

* * * *

particularly the "to be morally straight" of the Scout Oath and the "clean" point of the Scout Law.

Q. Is the policy contained in explicit language in any document that is disseminated to Scouts?

A. No.

Q. Is the policy contained in any document that is disseminated to parents of Scouts?

MS. KERR: I object to the form.

A. I don't know of any.

Q. Is the policy contained in any document that is disseminated to chartered organizations?

MS. KERR: I object to the form.

A. Again, all parents, chartered organizations, volunteers and youth members would all recognize this as being a true situation based on our Scout Oath and Scout Law and those principles that we have in the Boy Scouts of America.

That has always been true since I belonged. It never was in print or in writing, but we just knew.

Q. Has the policy ever been made known to the public in any writing?

MS. KERR: I object to the form.

By whom?

MS. COSTA: By the Boy Scouts of America.

A. None that I know of.

Q. How would a prospective Boy Scout learn of the policy?

A. When he fills out the application to become a member of the organization it specifies that he would abide by the Scout Oath and Scout Law.

Q. And what is it in the Scout Oath and Scout Law that communicates this policy to the Boy Scout?

A. The issue of "morally straight" in the Scout Oath and the "clean" point of the Scout Law.



Q. Why isn't the policy explicitly set forth in any writing?

MS. KERR: I object to the form.

A. I don't know.

Q. In what way --

MS. KERR: And it mischaracterizes his testimony.

Q. What are the reasons for the policy?

A. Homosexuals do not provide the role model that the parents of our young people want in leadership roles for their children.

Q. What ideals espoused by the Boy Scouts would a gay person not have?

A. The ideals that would be covered in "morally straight."

* * * *

Q. Have you or has anyone else in the Regional Office taken any steps to try to determine what parents' views are concerning this policy?

A. No.

Q. To your knowledge has anyone in the Boy Scouts of America taken any steps to determine what parents' views are in this policy?

A. I'm not aware of any.

Q. Have you had any conversations with Scouts about their views on this policy?

A. No.

Q. Have you had any conversations with Adult Leaders on their views of this policy?

A. I've discussed this policy with Adult Volunteer Leaders.

Q. In what context?

A. Well, one example would be with the Regional Review Committee volunteers.

Q. Was that in the case of James Dale?

MS. KERR: Objection to form.

THE WITNESS: I don't understand that.

Q. Was that in the context of reviewing James Dale's revocation or in some other context?

THE WITNESS: That I would have discussed policy with them?

MS. COSTA: Yes.

A. I don't remember that I did. They're aware of the that individual could be denied membership in the Boy Scouts of America.

An alcoholic or a person that would take alcohol on an outing with young people on any property owned by the Local Council or by the Boy Scouts of America, that individual would be denied membership in the Boy Scouts of America.

Q. This is all --



A. And any offense against the law other than sexual that an individual would do would be just cause for denial of membership.

Q. Okay.

Other than the offenses which would violate the law, the others you referred to, the use of alcohol and the use of foul language would be a cause for expulsion because they violate the requirement that a Scout be "clean"?

A. And "morally straight" in the Scout Oath, yes.

Q. In what way is being a homosexual inconsistent with being "morally straight"?

A. The interpretation of "morally straight", as I see it, would be practicing your religious beliefs, it would be living a life that would follow purity, follow honesty and would believe in justice.

I believe that the homosexual does not -- would not be a good role model for young people based on those things I just mentioned.

Q. Which of those things you just mentioned is inconsistent with homosexuality?

MS. KERR: I object to the form.

A. Well, I would say all of it.

Q. So you're saying that homosexuality is inconsistent with your religious belief?

A. That is correct.

Q. And what is the religious belief of the Boy Scouts of America?

MS. KERR: I object to the form.

A. The religious belief of the Boy Scouts of America. A person that belongs to the Boy Scouts of America attests to the fact that they believe in a God, but no particular religion. That's up to the individual.

Q. Does the Boy Scouts of America recognize that different religions have different ideas about morality?

A. Yes.

Q. Does the Boy Scouts of America recognize that some religious beliefs do not consider homosexuality to be inconsistent with morality?

MS. KERR: I object to the form.

If you know.

Q. Have there been any?

A. Yes.

Q. Can you give me the approximate number?

A. No, I don't remember.

Q. Is it an explicit teaching of the Boy Scouts of America that homosexuality is not morally straight?

MS. KERR: I object to the form.

Asked and answered.

A. When we teach morally straight or when you read "morally straight" it doesn't have the word "homosexuality in



it, as such, but it says those things that I've said before that it says in "morally straight."

Q. Is it an explicit aim of the Boy Scouts to discourage homosexuality?

A. No.

Q. Is it an explicit aim of the Boy Scouts to encourage heterosexuality?

A. The Boy Scouts of America espouses family values.

Q. And what do you mean when you say "family values"?

A. I mean that the young person would gain from being in a family situation.

* * * *

* * * *

Selected Exhibits to the Certification of
Steven M. Knecht, Attorney for Respondent

1991 Annual Report
Boy Scouts of America
(excerpts)

**To the Speaker of the United States
House of Representatives**

[PHOTO OMITTED]

***The mission and values*** *of the Boy Scouts of America have remained constant through periods of dramatic challenge for our country. The Scout Oath and Scout Law are unchanged. At the same time, Scouting has responded to societal change by seeking out new ways to meet the needs and interests of young people. The beneficial programs we've launched in recent years continue to prove their worth, such as those that are helping eliminate drug abuse, child abuse, illiteracy, youth unemployment, and hunger. The national Good Turn, Scouting for Food, was the largest food collection effort in the United States in 1991.*

*During the past year, BSA expanded the range of its outdoor programs, which have traditionally provided a setting for learning, growth, and discovery. The new outdoor skills instruction seminars, for instance, help Boy Scout leaders master basic and specialized skills they can pass along confidently to Scouts. Our newly published* Conservation Handbook *will be an essential reference, not only for Scout leaders but for anyone who works on conservation projects.*



*The future of our world is in the hands of children, and, historically, one of our primary goals has been to make contact with all young people who would benefit from Scouting. For children who have little chance of joining traditional youth organizations, our new Learning for Life program takes a values-based curriculum into the classroom. Our recently introduced Hispanic Emphasis program places professional staff in local councils to build support for Scouting in Hispanic communities.*

*In this changing world, the Boy Scouts of America believes the spirit of Scouting has no borders. Nineteen ninety-one saw the remarkable determination of several eastern European countries to provide Scouting for their young people. The Boy Scouts of America is proud to assist such efforts, to create new friendships, and to increase world understanding through Scouting.*

*The year 1991 is memorable for new strides taken. Please discover Scouting's many accomplishments in the pages of this report, and celebrate with us the triumphs we are sharing with young people.*

| | |
|---|---|
| /s/ [ILLEGIBLE] | /s/ [ILLEGIBLE] |
| President | Chief Scout Executive |
| [PHOTO OMITTED] | [PHOTO OMITTED] |

* * * *

The New York Times

December 17, 1993, Friday, Late Edition - Final

HEADLINE: United Way Threatens to Cut Aid to Boy Scouts

BYLINE: By JACQUES STEINBERG

BODY

A Connecticut United Way group yesterday threatened to cut off financial support for a local Boy Scout council unless the organization signed a pledge that it would no longer discriminate against gay people.

The new policy by the United Way of Greater New Haven was believed to be among the first of its kind in the Northeast. The United Way in San Francisco cut off support to the Boy Scouts in its area two years ago because of the organization's national policy barring membership to homosexuals.

While the New Haven United Way emphasized that its nondiscrimination policy applied to all recipients of its donations, it had been under intense political pressure to cut off support to the Scouts after it was disclosed this week that the Quinnipiac Council of Boy Scouts had dismissed a veteran scout leader solely because he is homosexual. The Quinnipiac Council, based in Hamden, Conn., receives $70,000, less than 10 percent of its budget, from the United Way.

The 67-year-old volunteer scout leader, a former Eagle Scout who spoke on condition of anonymity because he fears harassment, said in a telephone interview that he had been dismissed by the council last month after someone -- he does



not know who -- brought his homosexuality to the Scouts' attention. He said his private life might have been made public because he attends a New Haven church that is primarily attended by gay people.

No Chance of Altering Policy

"They secretly investigated me for four weeks," he said of the Scouts. "Then they convicted me."

In 23 years as a Scout and then a Scout leader, he said, there had never been any complaints about him.

The Quinnipiac Council, which serves about 43,000 youths in south-central Connecticut, referred questions to the Scouts' northeast regional office in Dayton, N.J., which in turn deferred to the Boy Scouts of America in Dallas.

Richard Walker, the national spokesman for the Scouts, said there was "not a chance" that the organization, known for teaching outdoor skills and homespun virtues to four generations of American boys, would alter its stance on homosexuals. He added that local councils were not permitted to sign agreements that were at odds with the national policy.

"Our national policy is based on what parents expect from us," Mr. Walker said. "Parents tell us that an avowed homosexual is just not a desirable role model."

'Assurance of Compliance'

At a news conference yesterday, Bob Fiscus, president of the New Haven United way, refused to single out the scout leader's dismissal as the impetus for the new policy.

While he said he was "aware of the feeling of some in our community" that the United Way should stop financing the Scouts in response to the incident, he said the new policy was "not directly related to this matter" and had been under discussion since early this year.

Under the directive, which will take effect in 1995 because the 1994 campaign is already under way, all agencies that receive money from the New Haven United Way will be required to sign "an assurance of compliance" with all policies, as well as applicable Federal and state laws, Mr. Fiscus said.

The new policy, which must be signed by the spring of next year, directs the United Way and its affiliates to conduct themselves "on a nondiscriminatory basis without regard to race, creed, color, sex, sexual orientation, mental disability, marital status," among others.

While those organizations that do not sign on to the policy would lose funds authorized by the board of the New Haven United Way, the organization said it would still pass along individual donations that contributors specifically earmarked for a particular recipient like the Boy Scouts.

Compensation From Others

Officials at the United Way of America said that its affiliate in Portland, Me., was believed to be the only other one in the Northeast, among a handful nationwide, that had adopted similar policies, some of them aimed directly at the Scouts. United Way groups, which govern themselves on a local level but have long supported the 86-year-old Scout program, give a total of about $86 million to Scout troops each year.



Mr. Walker, the Scouts' spokesman, said that in all cases, those councils that had lost United Way funding had been able to compensate with money from other sources.

In contrast to the New Haven United Way, United Way groups in the Newark area and in Westchester and Putnam Counties in New York said that there had been no one in their communities clamoring for anti-discrimination policies against the Scouts. The New Haven group had come under fire from New Haven city officials and a student group at Yale, among others, to rein in the Scouts after the dismissal of the leader.

The former scout leader, a resident of an undisclosed "shore line" community who joined the Scouts at age 12, said he had worked on and off with the organization ever since. And he said he hoped it would eventually take him back.

"I passionately believe in the program," he said. "I know the attitudes and feelings of some staff members and volunteers in scouting. And that attitude is very homophobic. I feel very sad and heartbroken about it."

Chicago Tribune
December 18, 1993

HEADLINE: SCOUTS' OUSTER OF GAY ENDS UNITED WAY AID

BYLINE: From Tribune Wires.

BODY

Protests over the ouster of a Boy Scout leader because he is gay have prompted the United Way of Greater New Haven to end its annual $70,000 contribution to the Scouts, the charity said Friday. "We are opposed to discrimination in whatever form it takes," said Robert Fiscus, president of the United Way chapter, who acted after intense pressure from state legislators and homosexual activists. The incident began earlier this week when it became known that the Quinnipiac Council of the Boy Scouts of America had ordered a volunteer leader to stay away from all Scout functions because an investigation revealed he was gay. Robert Walker, the Boy Scouts' national spokesman, said he was saddened by the United Way decision but said the organization has no intention of changing its policy, telling the Hartford Courant newspaper: "We don't discriminate. We differentiate in terms of what our constituency tells us they want."



**GO FOR THE EAGLE**
(excerpts)

**A Guide to Achieving Scouting's Highest Rank**

[GRAPHICS OMITTED]

**NANCY & DEAN HOCH**

**Foreword**

[GRAPHIC OMITTED]

Almost without exception, every one of the thousands of boys who enter the Boy Scouts of America each year yearns for Scouting's highest award, the coveted Eagle rank. Each boy sets his sights on this honor, as do his parents and leaders. But only a small percentage of young men ever achieve it--less than two out of every hundred boys who enter the program become Eagles.

Part of the reason for this high dropout rate is that information on achieving the Eagle rank is lacking. Yet the need is certainly there. The benefits of the Eagle program both to the Scout and society cannot be calculated.

The rank speaks for itself. When a hundred boys apply for a job, the candidate who can write "EAGLE SCOUT" on his application has a much better chance of being hired. He's a young man recognized to have significant training and skills. He's an acknowledged leader.

Why do so many Scouts attain the first few ranks but never reach the highest? Nancy and Dean Hoch, the parents of five Eagle Scouts who served as Scouting leaders for over 15 years, can tell you why. They do just that in this timely book and also

* * * *

## GO FOR THE EAGLE

The very first recipient of the Eagle badge was Arthur R. Eldred of Troop 1, Rockville Center, New York. Everyone wanted to be sure this first Eagle Scout was qualified to receive his award. So he was reviewed not only by his own troop's board of review but also by the nation's three major Scouting figures. Today it would be like having the three highest Scout executives from the National Scout Office as a review board.

Eldred's presentation was a grand affair, with many of Scouting's original founders in attendance. It set the stage for all the Eagle presentations to follow. There were to be over a million such Eagle awards given in the next 75 years.

Any Scout who joins this illustrious group of Eagles can be proud. He has accomplished something remarkable in his young life.

The Eagle...That's my goal!

[GRAPHIC OMITTED]

### What Are The Rewards?

A Scout not only learns important skills and develops excellent character traits on the trail to Eagle. He can also expect some very tangible rewards as well.

When he submits an application for a scholarship or for a job, he should include information on earning the Eagle award. This will almost always give him a significant advantage over the other applicants.

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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY

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Civil Action No. Mon C 330-92

JAMES DALE,

Plaintiff,

v.

THE BOY SCOUTS OF AMERICA
and THE MONMOUTH COUNCIL,
BOY SCOUTS OF AMERICA,

Defendants.

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CERTIFICATION OF REVEREND JOHN GIFFIN

STATE OF CALIFORNIA )
) ss.:
COUNTY OF RIVERSIDE )

John Giffin certifies:

1. I am an ordained minister of the United Methodist Church and I presently serve as Pastor of the Palm Springs United Methodist Church in Palm Springs, California.

2. I have participated in Scouting for approximately 5 years. As an adult volunteer, I serve as the head of the Chartered Organization for Pack 205, the United Methodist Church of Palm Springs. I also served as a Chaplain at the 1993 Boy Scout Jamboree.

3. United Methodist churches lead all other denominations in terms of youth served in church-sponsored Packs, Troops and Posts. United Methodist churches sponsor approximately 11,000 Cub Scout Packs and Boy Scout Troops nationwide, and total youth membership in these groups is approximately 340,000. There are trained Scouting coordinators in approximately 545 United Methodist districts across the country. Four percent of Americans are members of United Methodist Churches. The United Methodist Church is the second largest Protestant Body in America.

4. The United Methodist Church participates in Scouting and supports Scouting because of the values Scouting seeks to instill in young people. Belief in God, reverence toward God and recognition of one's duty to God are the most fundamental of those values, and the emphasis which Scouting places on those values accords with the beliefs and teaching of the Church.

5. The affiliation between the Church and Scouting immeasurably enhances Methodist youth ministry by enabling Methodist youth to participate in a wide variety of programs and activities designed to enhance spiritual and moral development consistent with the teachings and aims of the Church.

6. The United Methodist Church views homosexual conduct as incompatible with Christian teaching, in accord with Scouting's view of homosexual conduct. Regarding human sexuality, the Book of Discipline states:

> Although we do not condone the practice of homosexuality and consider this practice incompatible with Christian teaching, we affirm that God's grace is available to all.



Book of Discipline at 92 (1992 ed.). "Sexual relations are only clearly affirmed in marriage bond," in accord with the Church's commitment to family life as "the basic human community through which persons are nurtured and sustained in mutual love, responsibility, respect and fidelity." Id. at 90-91.

7. The United Methodist Church believes that a person who practices a homosexual lifestyle is not maintaining "the highest standards represented by the practice of fidelity in marriage and celibacy in singlehood." Book of Discipline at 202. Consequently, the Church does not ordain ministers who practice such a lifestyle:

> Since the practice of homosexuality is incompatible with Christian teaching, self-avowed practicing homosexuals are not to be accepted as candidates, ordained as ministers, or appointed to serve in The United Methodist Church.

Book of Discipline at 202.

8. In my opinion the United Methodist Church's opposition to civil rights discrimination against homosexuals does not affect the membership policies of private organizations such as Boy Scouts of America.

9. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated: January 27, 1994

/s/ John Giffin
John Giffin

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY

[CAPTION OMITTED]

CERTIFICATION OF RABBI ARTHUR VERNON

STATE OF NEW JERSEY )
) ss.:
COUNTY OF ESSEX )

Rabbi Arthur Vernon certifies:

1. I am a Jewish rabbi and the Director of Educational Development Services, Jewish Education Service of North America, the national agency for Jewish education.

2. I first joined Scouting in 1959 as a youth member of Boy Scout Troop 280, sponsored by Temple Judea in the Bronx, New York. I attained the rank of Life Scout. In 1962, I joined Explorer Post 280, also sponsored by Temple Judea. From 1964 to 1968, I attended Hunter College in the Bronx. During that time I was a member of the College Scouter Reserve and an active member of Alpha Phi Omega, a service fraternity. I am a Vigil Honor member of Order of the Arrow.

3. In 1983, when my older son joined cub scouts, I registered as an adult leader and served as den leader of his pack. My younger son joined cub scouts in 1985. I served as Den Leader Coach that year, and Cubmaster from 1986-89. In 1988 and 1989, I served as assistant Scoutmaster of my older son's Boy Scout troop and helped him attain the rank of First Class.



4. I am currently a National Vice-Chair of the Jewish Committee on Scouting. The Jewish Committee on Scouting is a liaison committee between the Jewish community and Jewish organizations and the National Council. The Committee sits in an advisory capacity.

5. I served as Headquarters Staff Jewish Chaplain at the National Jamboree this past summer.

6. Because the values of the Scout Oath and Law accord with Jewish beliefs and teachings, the Jewish community has endorsed and supported Scouting programs for decades. The Jewish community participates in Scouting and supports Scouting because of the values Scouting seeks to instill in young people. Fundamental among those values are belief in God, reverence toward God and recognition of one's duty to God.

7. Through this association with Scouting, Jewish youth are provided with a unique opportunity to participate in a structured program of activities designed to enhance spiritual and moral development consistent with Jewish teachings.

8. Scouting views homosexual conduct as immoral and as inconsistent with the Scout Oath's requirement that a Scout be morally straight and the Scout Law's requirement that a Scout be clean in thought, word and deed. This view is in accord with the teachings of Orthodox and Conservative Judaism.

9. There are three principal movements within Judaism -- Orthodox, Conservative and Reform. Orthodox Judaism is the classical wing of Judaism, Conservative Judaism is the historical wing of Judaism, and Reform Judaism is the

progressive wing of Judaism. According to a 1990 National Jewish Population Study there are approximately two million Jews affiliated with synagogues, 355,000 are Orthodox, 890,000 are Conservative, and 760,000 are Reform. I am a Conservative rabbi.

10. Because Jewish morality is based on a strong sense of family tradition and values, classical Jewish tradition condemns homosexual conduct. The Torah, the primary source of Jewish law, unambiguously describes homosexual conduct as an "abomination." Rabbinical interpretations of Jewish law have consistently affirmed this prohibition against homosexual conduct.

11. I was ordained as a Reform rabbi at Hebrew Union College - Jewish Institute of Religion in New York. I left the Reform movement because, among other things, I disagree with the liberal views of the Reform rabbinate in permitting known or avowed homosexuals to serve in clerical leadership roles in synagogues. Among Reform rabbis, there is a significant minority who disagree with the view that known or avowed homosexuals should be permitted to serve in clerical leadership roles.

12. I support Boy Scouts' policy excluding known or avowed homosexuals from adult leadership positions. An adult Scout leader serves as a role model for emerging adolescents who are developing values and making lifestyle decisions. Both Scouting and Jewish tradition strive to instill traditional, heterosexual family values in youth.

13. I use Scouting as an educational program for Jewish youth. If I lost the right to exclude known or avowed



homosexuals from leadership positions in Jewish Scouting units, I would withdraw my support of Scouting.

14. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated: January 26, 1994

/s/ Arthur Vernon
Arthur Vernon

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY

[CAPTION OMITTED]

CERTIFICATION OF REVEREND JERALD C. JOERSZ

STATE OF MISSOURI )
) ss.:
ST. LOUIS COUNTY )

JERALD C. JOERSZ certifies:

1. I am an ordained minister of the Lutheran Church Missouri Synod (the "Missouri Synod") and I serve as the Missouri Synod's Assistant Executive Director of the Commission on Theology and Church Relations. The Missouri Synod is one of the two principal branches of the Lutheran Church in America; the other being the Evangelical Lutheran Church in America (the "ELCA"). Eight percent of all Americans are Lutheran, and about 95 percent of Lutherans are members of either the Missouri Synod or the ELCA.

2. Lutheran congregations of the Missouri Synod and ELCA are strong supporters of Scouting. The National Lutheran Association of Scouters represents Lutheran congregations on Scouting's Religious Relationships Committee. Over 120,000 Lutheran youth are members of Scouting nationwide.

3. Lutheran congregations participate in and support Scouting because the values Scouting seeks to instill in young



people are consistent with the values the Church encourages. Belief in God, reverence toward God and recognition of one's duty to God are the most fundamental of those values, and the emphasis which Scouting places on those values accords with the beliefs and teaching of the Church.

4. The Lutheran Church's relationship with Scouting is a vital component of its youth ministry program because it enables Lutheran youth to participate in a wide variety of programs and activities designed to enhance spiritual and moral development consistent with the teachings and aims of the Church.

5. The Missouri Synod agrees with Scouting's view that homosexual conduct is immoral. The Missouri Synod has stated officially with respect to Scouting that the "declarations and practices of the Boy Scouts are not contrary to the Scriptures as they are officially defined" by the Missouri Synod. In its 1973 Convention, the Missouri Synod passed the following resolution:

> To Declare Homophile Behavior Sinful
>
> WHEREAS, God's word clearly identifies homophile behavior as immoral, and condemns it (Lev. 18:22; 20:13 and Rom. 1:24-27); and
>
> WHEREAS, The Law and the Gospel of Jesus Christ are to be proclaimed and applied to all conditions of mankind; therefore be it
>
> RESOLVED, that. the Synod recognize homophile behavior as intrinsically sinful; and be it further
>
> RESOLVED, that the Synod urge that the Law and Gospel of the Scriptures be applied to homophiles as

> appropriate with a view toward ministering the forgiveness of our Lord Jesus Christ to any and all sinners who are penitent . . . .

6. I participated in editing the 1981 Report of the Commission on Theology and Church Relations entitled Human Sexuality: A Theological Perspective (the "Report"), a true and correct copy of portions of which are attached hereto as Exhibit A. The purpose of the Report was to emphasize that "marriage is a divine institution . . . in which God intends to provide for (1) the relation of man and woman in mutual love (Gen. 2:18); (2) the procreation of children (Gen. 1:28); and (3) the partial remedy for sinful lust (1 Cor. 7:2)." Report at 10. The Report describes the position of the Missouri Synod as to homosexual orientation and conduct:

> Whatever the cause of such a condition may be, . . . homosexual orientation is profoundly 'unnatural' without implying that such a person's sexual orientation is a matter of conscious, deliberate choice. However, this fact cannot be used by the homosexual as an excuse to justify homosexual behavior. As a sinful human being the homosexual is accountable to God for homosexual thoughts, words, and deeds.

Report at 35. The 1992 Convention of the Missouri Synod reaffirmed the 1973 resolution, citing the above language from the Report. A true and correct copy of Resolution 3-12A, To Develop Plan for Ministry to Homosexuals and Their Families, is attached hereto as Exhibit B.

7. The Report continues:

> We should stress that the judgment made here is moral and theological, not legal. The question whether homosexual acts between consenting adults should be legally prohibited is one about which Christian citizens may disagree. Not all matters of morality are fit subjects for legislation. Although law does play an educative role and must, therefore, shape moral convictions, questions of morality are especially fit subjects for legal codification when they impinge on the common good. Whether homosexual acts privately engaged in damage the common good in such a way that public concern and control are needed is difficult to judge. Even if one felt that such relationships were not a fit subject for legislation, however, the law would still have a legitimate interest in protecting children from homosexual influence in the years when their sexual identity is formed. At any rate, the judgment of informed Christians may well differ as to precisely where the legal lines ought more property be drawn.



Report at 35-36 (emphasis added).

8. In October 1993 a Task Force on Human Sexuality of the ELCA proposed the First Draft of a Social Statement entitled The Church and Human Sexuality: A Lutheran Perspective. This Statement has not been adopted as ELCA policy and has drawn opposition from ELCA membership and leadership, as well as from the Missouri Synod. In response to the issuance of the Draft, Dr. Alvin L. Barry, President of the Missouri Synod, stated in an official press release that:

> The Holy Scriptures teach, and therefore The Lutheran Church -- Missouri Synod affirms, that homosexual behavior is intrinsically sinful . . . .

> The Holy Scriptures teach clearly that God's gift of human sexuality is to be expressed within the union of one man and one woman in holy matrimony. Furthermore, Holy Scripture specifically warns against the sin of homosexuality and other sexual sins. Because of what Holy Scripture teaches us, The Lutheran Church--Missouri Synod welcomes the opportunity to affirm this Biblical vision of marriage and human sexual behavior.

A true and correct copy of the press release is attached as Exhibit C.

9. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated: January 25, 1994

/s/ Jerald C. Joersz
Jerald C. Joersz



SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY

[CAPTION OMITTED]

CERTIFICATION OF ELDER JACK H. GOASLIND
IN SUPPORT OF DEFENDANTS'
CROSS-MOTION FOR SUMMARY JUDGMENT

STATE OF UTAH )
) ss.:
SALT LAKE COUNTY )

Jack H. Goaslind certifies:

1. I am a member of the First Quorum of the Seventy of the Church of Jesus Christ of Latter-day Saints ("LDS Church"), and have been General President of the Young Men's Organization in the Church since 1990.

2. As General President of the Young Men's Organization, I am responsible for giving direction to all of the young men in the Church ages 12 to 18. As part of this responsibility, I coordinate the Scouting program in the Church.

3. I started my association with Scouting when I joined Cub Scouts at the age of eight, and stayed until I was 14. I later became active in Scouting as a father with three sons all of whom were in the Cub Scout and Boy Scout programs, and became further involved as part of my ecclesiastical duties. I am currently a member of the National Executive Board of Boy Scouts of America.

4. The LDS Church has been involved in Scouting from the very beginning of the movement. The LDS Church sponsors approximately 26,000 Scouting units -- more than any other sponsor -- and has approximately 380,000 boys and 150,000 adult leaders registered in Scouting. Scouting is a large part of the Young Men's program of the LDS Church. The Young Men's program includes Sunday religious instruction and weekly weekday activities that are intended to reinforce the principles taught in the Sunday classes. Scouting is the program that the LDS Church uses for the weekday activities.

5. The LDS Church shares such a strong relationship with Scouting because of the values Scouting seeks to transmit to young people. Belief in God, reverence toward God and recognition of one's duty to God are fundamental values of both Scouting and the LDS Church.

6. Boy Scouts' belief that homosexual conduct is immoral and is inconsistent with the Scout Oath's requirement that a Scout be morally straight and the Scout Law's requirement that a Scout be clean in thought, word and deed, is in accord with the LDS Church's belief on homosexual conduct.

7. The LDS Church considers homosexual conduct to be immoral and opposes same-sex marriages. The LDS Church also teaches that a person must refrain from homosexual or lesbian relations to be morally clean. Homosexual conduct is a ground for excommunication or other Church discipline.

8. The LDS Church's position on homosexual conduct is drawn from Scriptures that pertain to family life. The LDS



Church believes in the sanctity of families and condemns behavior, such as homosexual conduct, that is contrary to God's plan for family living.

9. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: January 26, 1994

/s/ Jack H. Goaslind
Jack H. Goaslind

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY

[CAPTION OMITTED]

SUPPLEMENTAL CERTIFICATION OF
REVEREND DONALD K. HUMMEL

STATE OF NEW JERSEY )
) ss.:
BERGEN COUNTY )

Donald K. Hummel certifies:

1. I submit this certification to supplement my certification dated November 3, 1993.

2. Twenty-eight percent of Americans are members of the Roman Catholic Church. Approximately 285,000 Catholic youth are members of Boy Scouts of America nationwide.

3. I have read the certification of Bishop Gumbleton. He states that homosexual conduct is regarded by the Catholic Church as immoral and sinful. Homosexual conduct and the practice of a homosexual lifestyle are not to be condoned in any way and is inconsistent with the teachings of the Church.

4. The Church's opposition to civil rights discrimination against homosexuals has no relevance to its view of the membership policies of private organizations such as Boy Scouts of America. The Church agrees with Boy Scouts' emphasis on traditional moral values and believes that avowed homosexuals do not provide the type of adult moral leadership that is consistent with Church teaching. While the



Church believes that no person should be denied equal rights under the law, it does not believe that an organization teaching moral values consistent with those of the Catholic Church should be compelled to use avowed homosexuals as role models for moral behavior.

5. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated: January 26, 1994

/s/ Donald K. Hummel
Donald K. Hummel

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY

[CAPTION OMITTED]

CERTIFICATION OF REVEREND SAM HOUSTON IN SUPPORT OF DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT

STATE OF TEXAS )
) ss.:
COUNTY OF HILL )

SAM HOUSTON certifies:

1. I am an ordained Southern Baptist minister and I currently serve as Pastor at the Woodrow Baptist Church in Covington, Texas.

2. I have participated in Scouting for almost 40 years. As a youth member I attained the Boy Scout rank of Eagle. As an adult volunteer I have served as a Cubmaster and Scoutmaster and I have served as Chaplain at Scout camps and Scouting Jamborees. I also assisted my son in achieving the rank of Life. I am a recipient of the Good Shepherd award.

3. I currently serve on the board of directors of the Association of Baptists for Scouting. The Association is a nationally active committee whose mission is to assist the Boy Scouts of America in chartering Packs, Troops and Posts to work with local Baptist churches in instilling values in youth.



4. Southern Baptists participate in Scouting and support Scouting because of the values that Scouting seeks to instill in young people. Belief in God, reverence toward God and recognition of one's duty to God are the most fundamental of these values, and Scouting's emphasis on these values accords with Southern Baptist beliefs and teachings.

5. Southern Baptist churches in the United States sponsor approximately 4918 Scout Troops, Packs and Posts. Approximately 146,682 youth and adults are members of these units. Ten percent of all Americans are Southern Baptists.

6. The partnership between Scouting and Southern Baptist churches provides Southern Baptist youth with opportunities to participate in programs and activities which augment the churches' mission of instilling values and developing moral character.

7. Southern Baptist belief accords with Scouting's view that homosexual conduct is immoral and unclean. Southern Baptists continued to express their belief as to the sinfulness of homosexual conduct in its resolution at the June, 1993 Convention:

> Therefore be it RESOLVED, That we, the messengers to the Southern Baptist Convention, meeting at Houston, Texas, June 15-17, 1993, affirm the biblical truth that homosexuality is sin, as well as the biblical promise that all persons, including homosexuals, can receive abundant, new and eternal life by repenting of their sin and trusting Jesus Christ as Savior and Lord (1 Cor. 6:11). . . .

Resolution No. 3 - On Homosexuality, Military Service and Civil Rights, adopted, June 15-17, 1993 (attached as Exhibit A).

8. Because of its belief as to the immorality of homosexual conduct, the Southern Baptist Church does not allow individuals who practice a homosexual lifestyle to be ordained members of the Church.

9. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated: January 24, 1994

/s/ Sam Houston
Sam Houston



SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY

[CAPTION OMITTED]

CERTIFICATION OF
REVEREND DR. BARRY M. WALKER

STATE OF OHIO )
) ss.:
COUNTY OF COLUMBIANA )

Barry M. Walker certifies:

1. I am an ordained Presbyterian minister and have a doctorate degree in ministry, and I presently serve as the stated supply pastor of Vienna Presbyterian Church in Vienna, Ohio.

2. I am also past president of the central region of the National Association of Presbyterian Scouters and a member of the Executive Committee. The National Association of Presbyterian Scouters was formed in 1986 for the purposes of interpreting Scouting to the governing bodies of the Church, assisting and encouraging congregations in becoming chartered to operate Scouting units, and promoting Scouting's religious programs, such as the religious emblem and Scout Chaplain and Chaplain's Aide programs.

3. As a youth I participated in the Scouting program, attaining the Boy Scout rank of Eagle Scout. As an adult I have served Scouting in numerous volunteer positions, including Assistant Scoutmaster, Scoutmaster, Roundtable Commissioner, Explorer Post Advisor and Explorer

Committee member. I have served as chaplain at two Jamborees and at Scout camp for the past 10 years. I also have assisted my son in attaining the rank of Eagle. I received the Silver Beaver Award for service to youth.

4. The Presbyterian Church participates in Scouting and supports Scouting because of the values Scouting seeks to instill in young people. Belief in God, reverence toward God and recognition of one's duty to God are fundamental values of both Scouting and the Church.

5. The Church's affiliation with Scouting is longstanding; Boy Scouts of America was founded in 1910, and by 1920 Presbyterian congregations were already sponsoring scouting units.

6. Presbyterian churches in the United States sponsor over 4,000 Scout Troops, Packs and Posts. More than 125,000 youth are members of Scouting. Seven percent of all Americans are Presbyterian.

7. The Church's affiliation with Scouting augments the Church's youth ministry by making activities available to youth which promote spiritual and moral growth and development.

8. Boy Scouts' belief that homosexual conduct is immoral and is inconsistent with the Scout Oath's requirement that a Scout be morally straight and the Scout Law's requirement that a Scout be clean in thought, word and deed, is in accord with the Church's beliefs and teachings on homosexuality. The Presbyterian Church considers homosexual conduct and the practice of a homosexual lifestyle a sin. See The Church and Homosexuality at 60 (1978) (excerpts attached at Exhibit A).



9. This belief in the immorality of homosexual conduct is the basis for the Church's refusal to allow for the ordination of practicing homosexuals:

> Officers are not free from repeated expressions of sin. Neither are members or officers free to adopt a lifestyle of conscious, continuing, and unresisted sin in any area of their lives. For the church to ordain a self-affirming, practicing homosexual person to ministry would be to act in contradiction to its charter and calling in Scripture, setting in motion both within the church and society serious contradictions to the will of Christ. . . . Therefore our present understanding of God's will precludes the ordination of persons who do not repent of homosexual practice.

Id. The practicing homosexual does not set the proper example of moral integrity for the community that is required of ordained officers.

10. Those individuals of homosexual orientation who reject the homosexual lifestyle may be ordained officers of the Church:

> The repentant homosexual who finds the power of Christ redirecting his or her sexual desires toward a married heterosexual commitment, or finds God's power to control his or her desires and adopt a celibate lifestyle, can certainly be ordained, all other qualifications being met.

Id.

11. The Presbyterian Church's opposition to civil rights discrimination against homosexuals has no relevance to its

view of the membership policies of private organizations such as Boy Scouts of America. The Church agrees with Boy Scouts' emphasis on traditional moral values and believes that avowed homosexuals do not provide the type of adult moral leadership that is consistent with Church teaching. While the Church believes that no person should be denied equal rights under the law, it does not believe that an organization teaching moral values consistent with those of the Presbyterian Church should be compelled to use avowed homosexuals as role models for moral behavior.

12. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated: January 25, 1994

/s/ Barry M. Walker
Barry M. Walker



SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY

[CAPTION OMITTED]

CERTIFICATION OF DR. PARK DIETZ IN SUPPORT OF DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT

STATE OF CALIFORNIA )
: ss.:
COUNTY OF ORANGE )

DR. PARK DIETZ, having been duly sworn, deposes and says:

1. I am a physician specializing in forensic psychiatry and a sociologist. Most of my career has been devoted to the study of socially proscribed behavior. I am Clinical Professor of Psychiatry and Biobehavioral Sciences at the UCLA School of Medicine. Since 1981, I have been the psychiatric consultant and a guest lecturer for the Behavioral Sciences Unit and National Center for the Analysis of Violent Crime of the F.B.I. Academy in Quantico., Virginia. Since 1987 I have been the Forensic Psychiatry Consultant for the Forensic Sciences Unit of the New York State Police, Albany, New York.

2. I received my Bachelor's Degree in Psychology and Biology from the Cornell University College of Arts and Sciences in 1970. In 1975, I received an M.D. degree from the Johns Hopkins University School of Medicine and a Master of Public Health degree from the Johns Hopkins

School of Hygiene and Public Health. In 1984, I received a Ph.D. in sociology from the Johns Hopkins University.

3. I have been board certified in psychiatry by the American Board of Psychiatry and Neurology since 1979.

4. From 1986 to 1989, I was a Professor of Behavioral Medicine and Psychiatry and a Professor of Law at the University of Virginia. From 1983 through 1986 I was Associate Professor of Law and of Behavioral Medicine and Psychiatry at the University of Virginia Schools of Law and Medicine. From 1978 through 1982 I was an Assistant Professor of Psychiatry at the Harvard Medical School at the McLean Hospital in Belmont, Massachusetts. From 1977 through 1978 I was Chief Fellow in Forensic Psychiatry at the Center for Studies in Social-Legal Psychiatry at the University of Pennsylvania School of Medicine. From 1975 through 1977 I was a Fellow in the Department of Psychiatry and Behavioral Sciences of the Johns Hopkins University School of Medicine.

5. I have authored approximately one hundred professional publications, mostly on various aspects of socially proscribed behavior. I have served on the editorial boards of the Bulletin of the American Academy of Psychiatry and the Law, the Journal of Forensic Sciences, Behavioral Sciences and the Law, and other professional publications.

6. I am President-Elect of the American Academy of Psychiatry and the Law and a Fellow of the American Psychiatric Association. I am a member of the American Academy of Forensic Sciences, and have been a Fellow of the Academy since 1979. I was chairman of the psychiatry section of the Academy from 1979 through 1982 and served



on the executive committee from 1982 through 1985. I was a founding member of the Association of Directors of Forensic Psychiatry Fellowships, and served as vice president from 1986 through 1988.

7. Much of my work has dealt with sexual behavior, especially those forms of sexual behavior that are controversial or unlawful. I have been consulted as an expert on sexual behavior by the F.B.I., the New York State Police, and scores of state and federal law enforcement and prosecutive agencies.

8. I have testified, lectured, or provided consultation in 46 states, the District of Columbia, Canada, Mexico, England, Australia, and West Germany. To provide a few examples, I was an expert witness for the prosecution in the trials of John Hinckley, Jr., for the attempted assassination of President Ronald Reagan; Walter Leroy Moody, Jr., for obstruction of justice charges in connection with the serial bombings that killed U.S. District Court Judge Robert Vance in Birmingham, Alabama; Jeffrey Dahmer for serial murders in Milwaukee, Wisconsin; and Arthur Shawcross for serial murders in Rochester, New York. I am currently retained by the Nassau County, New York, District Attorney's office in connection with the prosecution of Joel Rifkin for a series of prostitute murders.

9. A copy of my full curriculum vitae is attached hereto as Exhibit A.

10. I agree with several of the opinions of Dr. Bryant L. Welch concerning the development of norms, values, and identity. In particular, I agree that youth members in Scouting "are at an age where their norms, values and identities are

susceptible to change and influence" [Dr. Welch's Affidavit, paragraph 12], that reinforcement and socialization occur in Scouting "through the processes of role modeling, normative advocacy, rhetorical reflection, and labeling and identification" [Dr. Welch's Affidavit, paragraph 16], and that the role model and educator in a youth organization "advocates the specific norms and values to youth ... that he wants them to adopt. Over time, these values and norms are reinforced in the boys through this process" [Dr. Welch's Affidavit, paragraph 17].

11. I disagree with Dr. Welch's assertion that "molestation is not a crime caused by one's sexual orientation; rather, it is a crime of dominance which arises when a person has difficulty with appropriate human intimacy" [Welch affidavit, paragraph 27]. The sexual abuse of boys by adults occurs for multiple motives, including sexual attraction. Openly homosexual men are significantly more likely to be sexually attracted to adolescent boys than heterosexual men.

12. I disagree with Dr. Welch's opinion that "the existence of openly gay adult leaders in Scouting will not affect ... the program's ability to transmit its norms and values to Scouts" [Welch affidavit, paragraph 22]. An openly gay adult leader represents and models norms and values regarding sexual behavior that are diametrically opposed to the norms and values of the Scouting movement with respect to the acceptability of homosexual behavior.

13. Dr. Welch has asserted that a homosexual role model would not influence Scouts, reasoning that sexual orientation is not subject to influence by role models. Whatever the merits of Dr. Welch's opinion that a homosexual role model would not affect sexual orientation-- a matter on which responsible experts



disagree-- there is no doubt that role models influence sexual behavior. Homosexual orientation is not a necessary condition for an adolescent to engage in sexual behavior with another male adolescent or adult. Exploratory sexual play is common among adolescent boys, and male-male sexual behavior can take place for a variety of reasons other than sexual orientation, including curiosity, boredom, a need to please, seduction, rebellion against parental or societal standards, transitory sexual interest, inhibition with females, or unavailability of females.

14. Societal and cultural demands in the form of norms and values are among the major inhibitors of male-male sexual behavior among adolescents. An avowedly homosexual Scout leader models the view that sexual contact between males is acceptable behavior. By decreasing boys' inhibitions against sexual activity between males, such a model increases the vulnerability of Scouts to seduction by both adult males and other boys.

15. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

/s/ Park E. Dietz
PARK E. DIETZ, M.D.,
M.P.H., PH.D.

Sworn to before me this 24th day
of January 1994

/s/ Susan W. Byhower
Notary Public

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY

[CAPTION OMITTED]

SUPPLEMENTAL CERTIFICATION OF
DR. RICKY L. SLAVINGS

1. I submit this certification to supplement my October 26, 1993 certification. I have read the affidavit of Dr. Bryant Welch in support of plaintiff's motion for summary judgment.

2. I have had extensive experience in youth baseball as well as other youth sports. From 1977-79, I served as an assistant director and coach for the Army Dependent Youth Athletic Program (ADYAP) at the military installation where I served. In this role, I supervised the baseball league for boys aged 11 to 18, and coached both baseball and basketball teams for boys aged 11 to 13. From 1979-81, I assisted with several baseball teams, including Little League teams in Arkansas and Boys Club teams in Tennessee. From 1982-88, I coached youth baseball (Little League and Pony League) in Missouri, and since 1988 have coached Dixie League youth baseball teams each summer in Radford, Virginia (ages 11 to 13 and 15 to 16). In addition, I have coached in the local Junior Basketball League for boys aged 11 to 13 for each of the past six years and in the AAU youth basketball program. I am currently coaching a Junior boys team for boys aged 11 to 13 and will coach a 14 and under AAU team beginning next month.

3. As noted by Dr. Welch, youth baseball and other youth sports programs share some structural similarities in



terms of group size and adult volunteer participation. However, these superficial similarities contrast with the marked differences in the values, purposes and methods of these groups.

4. In sociological terms, small groups fall along a continuum from primary groups at one extreme to task groups on the other extreme. While both primary groups and task groups are small in size, engage in face-to-face interaction, and have a sense of purpose, there are marked differences between them. Primary groups have broad socialization purposes, and provide emotional support and a sense of togetherness and belonging in the process. Primary groups have a greater degree of permanence. A loving family is the prototypical primary group. Task groups have a narrow, instrumental purpose, such as accomplishing a project, making a decision or participating in a single, focused activity. A jury is a task group.

5. Boy Scout Troops fall closer to the primary group end of the continuum, whereas youth baseball teams fall closer to the task group end.

6. Youth baseball teams lack the permanence and intimacy of face-to-face interactions that characterize Scouting, and have a highly specific, instrumental purpose of teaching and competing in baseball during a six to eight week season each year. The limited value transmission that may take place in a youth league centers on fair play, sportsmanship, and team cooperation; but it is clearly secondary and insubstantial as compared to the purpose of playing recreational sports.

7. Even with the best role models as coaches, schedules and timing do not allow coaches to develop close, counselling relationships with the players. To illustrate, as a youth baseball coach, I practice with a te of 18 or so players who travel to and play 10 to 12 games during a six-week season. Rarely, if ever, do I assemble that group to participate in other, non-baseball related activities (save for an end-of-year awards party). After the season, the team disbands and I have no interaction with the players unless they play for me again the next year. Given that boys are usually arranged into two-year age brackets in youth programs, a team will have an average 50% turnover rate from year to year. In many leagues, this is worsened by the fact that boys are shifted from team to team each year, and many coaches leave after only one season. Even if the same coach kept the same players for both years, he would have only two relatively short periods of interaction with his players.

8. The lesser degree to which a youth baseball coach can influence moral development also derives from the limited objective of a coach. A youth baseball coach's primary responsibility is to teach his players how to play baseball effectively. While this goal necessarily requires the instruction in teamwork and cooperation, because of the limited time a coach has to maximize the baseball skills of his players, the coach usually has no time or inclination to transmit values not necessary to playing baseball effectively. At practices and games, the coach spends virtually all of his time organizing drills, developing skills and teaching baseball. With limited practice facilities in most leagues,



coaches focus on skill development during available field time and emphasize strategies for winning the next game.

9. The limitations on the ability to transmit positive values is also related to the public nature of youth baseball as a spectator sport. As studies have shown, the competitive sport experience takes place in a highly public and evaluative environment that produces in children both pre-competition pressure to win and post-competition stress if their team loses. Numerous studies have indicated that spectator parents are much more likely to emphasize winning rather than other values with the children.

10. In addition, the values which are transmitted in youth baseball teams are not always positive. Studies indicate that youth baseball emphasizes competitiveness over comraderie and sportsmanship. Adult participants receive little, if any, training, and studies have indicated that they often value the "product" of winning over the "process" of competing, learning and having fun. Some systematic studies have reported that boys and young men who participated in organized sports were less concerned about sportsmanship and placed greater emphasis on skill and victory than those who did not participate. It has even been reported that young athletes often report a decreased interest in fairness.

11. Boy Scouting is a very different youth organization. The fundamental purpose of Scouting is to reinforce the positive values of the Scout Oath and Scout Law through Troop activities designed for that purpose, whether a Troop meeting, completing requirements for Troop advancement or religious awards, doing a daily good turn, or participating in a Troop outing.

12. Boy Scouts primarily identify themselves and other Scouts as members of Troops and, within Troops, as members of Patrols. Uniforms identify a boy as a Boy Scout; a Troop number and a Patrol patch on the uniform identify a Boy Scout as a member of small primary groups within Boy Scouting. Scouts in a Troop usually become good friends and participate in many activities together both inside and outside of Scouting. Troops are same-sex, relatively permanent peer groups in which the socialization of norms and values occurs very effectively.

13. A Boy Scout participates in the vast majority of Scouting activities with his own Troop. Throughout the school year, Troops meet on a weekly basis; many troops meet in the summer as well. A Scout's Troop typically camps overnight one weekend per month. Once or twice per year, the Troop may participate as a Troop with other Troops in a Scout Show, Klondike Derby or Camporee. A typical Troop spends one to two weeks per year at summer camp with other Troops, but each Troop camps separately. Once every four years a small percentage of Scouts have the opportunity to attend a national Jamboree, at which Scouts from different Troops are assigned to temporary Jamboree Troops. Thus, a Scout typically participates in at least 35 meetings and six to eight weekends with his Troop alone.

14. Unlike baseball, Scouting is not a "spectator sport" performed in public. The vast majority of activities take place privately, within the Troop, and the value transmission methods can successfully operate without outside societal pressures.



15. Scouting provides an extensive training program for adult leaders that emphasizes the socialization of norms and values, and teaches methods for instilling those norms and values.

16. Scouts affords for greater opportunity to an adult leader to influence the moral development of youth in Scouting than does youth baseball. Scouting activities allow the Scout leaders to interact with Scouts in ways that reinforce the broad array of traditional values, such as honesty, reverence and kindness, of the Scout Oath and Law. A Scout leader maintains a continuous relationship with Scouts and usually develops a close relationship with a Scout through the weekly Troop meetings, Scoutmaster conferences, monthly trips and outings, as well as week-long summer camp-outs and trips. In Scouting, I meet weekly with the Scouts in my Troop, spend an entire weekend with them at least once a month, participate in community service projects with them on a regular basis, attend school plays and other events in which they participate, and each summer take at least two trips or encampments of a week or longer, in which I and the other Scout leaders spend 100% of our time interacting with the Scouts. Thus, the Scoutmaster in many cases spends more time actually interacting directly with a Scout than do his parents. Often the Scout leader is the first adult outside of the Scout's family with whom the Scout develops a close relationship.

17. The differing ability to be a role model in youth baseball and in Scouting is apparent from my own experiences. Over the past several years, I have worked with hundreds of Scouts. Many of my former Scouts have written to me or called for my advice on a variety of important life

decisions. I have been invited to numerous graduations including high schools, colleges, Air Force Academy, medical schools and law schools from which my former Scouts have graduated. I have received letters from several young adults, and numerous parents bearing testimony to the role modelling and positive value transmission they experienced as a result of the Scouting program, and the importance of the relationship they developed with me as a Scout leader.

18. Although I have been coaching for about the same length of time, I have never had the same long-lasting relationships with former players or parents, unless they also knew me as a Scout leader. From my experience in Scouting, parents share the desire to teach the norms and values upon which the program is built. My experiences in Scouting and youth sports confirm the theories and research in role modelling and value transmission which indicate that those adults who have close, primary relationships with young people are in the best position to transmit values.

19. The presence of avowed homosexuals in Scouting would interfere with transmitting the value that homosexual conduct is not morally straight or clean. An avowed homosexual is a role model for the morality of his lifestyle; his presence would send to youth the signal that engaging in homosexual conduct is morally straight and clean, in conflict with the traditional sexual morality Scouting seeks to convey.

20. Dr. Welch focuses his arguments on the relationship between sexual orientation and morality in causal terms, that is that lack of morality does not cause homosexual orientation. This statement mischaracterizes my original point that advocating a particular norm (e.g., homosexual



conduct is moral) would lead boys to accept that belief. While "homosexual orientation" is not a norm, a belief about whether homosexual conduct is moral or clean is a norm. And as Dr. Welch agrees, "the ability of a small group to transmit a given set of norms and values would be interfered with if the group's leaders did not transmit those norms or values." That effect is even more pronounced when that leader attempts to transmit a norm that is directly opposite from the one the organization seeks to instill.

21. Dr. Welch takes no account of the influence an avowed homosexual role model may have on a male youth's behavior. Experimentation with homosexual identity or homosexual behavior is not uncommon, and may be influenced by a homosexual role model even if orientation is not affected.

22. While a number of medical and psychological models of the etiology of homosexual orientation suggest that it is present very early in life and is difficult to change, these are by no means the only models that are supported by empirical evidence. The subjectivist model within sociology and some psychological models suggest that, even if some predisposition does exist, sexual orientation is also influenced by social environment. Even if biological theories can establish a behavioral tendency, they have to this point been unsuccessful at explaining the entire etiological story. For instance, most studies of identical twins indicate that when one twin is gay, the other is not always gay; this suggests that homosexual orientation (or predisposition) can only be partly accounted for by biology. It is unclear why some people adopt a homosexual identity and others do not and why some persons who claim both homosexual and heterosexual

identities engage in homosexual behavior and others do not. In short, insufficient evidence exists to accept the idea that homosexual orientation or identity is present at birth or shortly after.

23. I have taken numerous Boy Scout leader training courses including Boy Scout Leader Wood Badge training. Boy Scout leader training is overwhelmingly devoted to teaching about the values and methods of Boy Scouting. Scouting seeks to give leaders the techniques which will permit boys to run the Scouting program themselves and the techniques to work with other volunteers whose participation is motivated by factors other than a paycheck. For example, in Wood Badge training, adult leaders are divided into Patrols just as youth would be in a Troop. These approaches are far removed from the models of business leadership appropriate to a corporate hierarchy. Thus, participation in Wood Badge or other Scout leader training is not a means of acquiring business management skills.

24. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated: January 26, 1994

/s/ Ricky L. Slavings
Ricky L. Slavings



SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY

[CAPTION OMITTED]

CERTIFICATION OF PARVIN L. BISHOP

STATE OF ARIZONA )
) ss.:
COUNTY OF MARICOPA )

Parvin L. Bishop certifies:

1. I am National Director of Program of Boy Scouts of America ("Boy Scouts").

2. Scouting is a volunteer movement that seeks to educate boys and young adults in the responsibilities of citizenship, provide growth in moral character and enhance the development of physical, mental and emotional fitness. The values that Scouting aims to instill are those expressed in the Scout Oath and the Scout Law. The Scout Oath states:

> On my honor I will do my best
>
> To do my duty to God and my country and to obey the Scout Law;
>
> To help other people at all times;
>
> To keep myself physically strong, mentally awake, and morally straight.

The Scout Law provides:

A Scout is: . . . Trustworthy.
. . . Loyal.
. . . Helpful.
. . . Friendly.
. . . Courteous.
. . . Kind.
. . . Obedient.
. . . Cheerful.
. . . Thrifty.
. . . Brave.
. . . Clean.
. . . Reverent.

3. Boy Scouts believes that homosexual conduct is not "morally straight" under the Scout Oath, and not "clean" under the Scout Law. Consequently, known or avowed homosexual persons or any persons who advocate to Scouting youth that homosexual conduct is "morally straight" under the Scout Oath, or "clean" under the Scout Law will not be registered as adult leaders.

4. I have reviewed the certifications of Michael Cahn and Robert L. Smith, Jr., in which Cahn and Smith suggest that they teach Troop members that homosexual conduct is "morally straight" and "clean" under the Scout Oath and Law.

5. Boy Scouts is currently investigating the veracity of these claims. If true, Boy Scouts will revoke the registration of Cahn and Smith.



6. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated: January 26, 1994

/s/ Parvin L. Bishop
Parvin L. Bishop

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY

[CAPTION OMITTED]

SUPPLEMENTAL CERTIFICATION OF DAVID K. PARK

STATE OF TEXAS )
) ss..
COUNTY OF DALLAS )

DAVID K. PARK certifies:

1. I am National Legal Counsel for Boy Scouts of America ("Boy Scouts").

2. Boy Scouts became aware of the view of Joseph Velasquez with respect to its membership policy as to known or avowed homosexuals when he addressed the Relationships Committee of Boy Scouts on February 9, 1993.

3. After Mr. Velasquez discussed his view with the press, Boy Scouts asked Mr. Velasquez to resign from his position on the Executive Board.

4. Mr. Velasquez submitted his resignation on July 26, 1993.

5. The Executive Board is composed of no more than 64 regular members who shall be elected at the annual meeting of Boy Scouts for one year terms.

6. Youth members may be appointed by the President with the approval of the Executive Board to serve for a specified term of up to one year. A youth member may be



elected for a second one-year term. The aggregate number of youth members on the Executive Board shall not exceed five.

7. Boy Scouts records indicate that Dr. Satcher and William Kirkner were never members of the Executive Board of Boy Scouts of America.

8. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated: January 26, 1994

/s/ David K. Park
David K. Park

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MONMOUTH COUNTY

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Civil Action No. Mon L 5373-92

JAMES DALE,

Plaintiff,

v.

THE BOY SCOUTS OF AMERICA
and THE MONMOUTH COUNCIL,
BOY SCOUTS OF AMERICA,

Defendants.

---

DEPOSITION OF JAMES WILLIAM KAY
JANUARY 19, 1993

(excerpts)

* * * *

Q. If the Council learned that the Scoutmaster was running a unit -- his Troop -- in a way that was inconsistent with the Rules and Regulations of the Boy Scouts of America, would the Council intervene or take action in any form?

A. Yes, it would.

Q. How would it intervene or take action?

A. There could be a number of different ways. It would probably depend a lot on the particular situation.



Each one is an independent situation and the circumstances would dictate how we would intervene.

Q. Could one form of intervention include instructing the Scoutmaster that he should be conducting himself differently?

MR. DAVIDSON: I object to the form of the question.

A. It's conceivable that the circumstance would call for coaching in that instance and coaching only.

Q. Could one form of intervention include revoking the membership of the Scoutmaster?

A. Yes.

* * * *

Q. Do you recall any instances of the National Office rejecting an Adult Application to a unit in the Council that you worked for the eight and one-half years prior? And I believe you said that was with Rip van Winkle in New York, is that correct?

A. Yes.

I recall no such rejection.

* * * *

Q. In your tenure as Council Executive for Monmouth Council have you had the opportunity to follow these procedures in revoking the membership of an adult member of a unit within Monmouth Council?

A. I have.

Q. In how many instances?

A. Three.

Q. One of those instances being James Dale?

A. That's correct.

Q. What were the grounds for revocation in the other two instances?

A. In one instance it was conviction on child abuse and in another instance it was conviction on substance abuse.

Q. In each of those instances who made the initial determination that revocation of membership was appropriate?

A. I did.

* * * *

Q. Mr. Kay. James Dale's membership in the Boy Scouts was revoked, is that correct?

A. That's correct.

Q. And that revocation decision was made by you, is that correct?

A. Yes.

* * * *

Q. When did you first learn that Mr. Dale is homosexual?

A. In 1990, in the summer of 1990.



Q. And how did you learn that Mr. Dale is homosexual?

A. I became aware of it through a newspaper article that appeared in which he affirmed his homosexuality.

Q. Was there any basis for Mr. Dale's membership revocation, other than his homosexuality?

A. None that I would be -- that I was aware of.

Q. And you're the person who made the revocation decision, is that correct?

A. Yes.

Q. Who was involved in the revocation decision, other than you?

A. This was a uni -- This was my decision.

Q. Did you involve anyone at the National Council?

A. I spoke with the Director of Registration concerning this situation.

* * * *

Q. Of the documents that you were aware of which contain explicit reference to the Boy Scouts' policy concerning homosexuals, have any of those documents been provided to Scouts?

A. I don't know. I would be unaware of that.

Q. Are you aware of any of those documents being provided to adult members of Scouting?

A. Again, I would not be aware of that.

Q. Are you aware of any of these documents being provided to parents of Scouts?

A. I am not aware of it.

Q. Are you aware of any -- (Discussion off the record between the witness and Mr. Davidson.)

Q. Are you aware of any of those documents being provided to any chartered organizations?

A. I don't know.

Q. Is there any document disseminated by Monmouth Council which makes reference to the policy concerning homosexuals?

MR. DAVIDSON: I object to the form.

A. I'm not aware of one.

* * * *

Q. Do you believe that every prospective member who fills out the application understands the concept of "morally straight" to exclude homosexuality?

MR. DAVIDSON: I'm going to direct him not to answer that question.

MS. COSTA: On what basis?

MR. DAVIDSON: It's not a question that anybody can competently answer.

MS. COSTA: Can you answer that question?

THE WITNESS: I don't see how I could. No, I can't.



Q. Have you ever spoken to the members of units in Monmouth Council about their understanding of "morally straight"?

A. (No response.)

MS. COSTA: That's a simple yes or no.

A. No.

Q. Have you ever spoken to the parents of youth members of units in Monmouth Council about their understanding of the concept of "morally straight"?

A. No.

(Discussion off the record between the witness and Mr. Davidson.)

Q. Have you ever spoken to any adult member in Monmouth Council about their understanding of the concept of "morally straight"?

A. I've spoken to them in the context of the Scout Oath and Law.

Q. Have you ever spoken to them about whether or not the term "morally straight" includes the Boy Scouts' understanding of "morally straight" to exclude homosexuality?

MR. DAVIDSON: I object to the form.

A. I've not spoken to them in that regard.

* * * *

Q. When did the Boy Scouts determine that a homosexual doesn't meet or satisfy the

requirements of moral straightness?

A. I can't answer. I don't know.

(Discussion off the record between the witness and Mr. Davidson.)

Q. Can you please give me your understanding of the Boy Scouts' definition of "morally straight."

MS. KERR: I believe that was asked and answered.

Q. Can you please give a your understanding of the Boy Scouts' definition of "morally straight."

A. In accordance with the -- According to the Boy Scouts of America, it would be a life of -- a character, a strong character exemplified by the virtues of justice of cleanliness.

Q. In what way does a homosexual fail to satisfy that standard?

A. Well, I --

(Discussion off the record between the witness and Ms. Kerr.)

MS. COSTA: There's a question pending.

MR. DAVIDSON: I think that's the question that's tautological.

A moral view is a moral view. I don't understand what meaning there is to a question that asks for what aspects of it.



I mean I don't -- I don't understand the question. How can anybody answer that question?

Do you want to clarity what you're driving at?

MS. COSTA: I'd like the witness to answer the question.

MR. DAVIDSON: I don't know how he could.

(Discussion off the record involving the witness, Mr. Davidson and Ms. Kerr.)

THE WITNESS: I'm sorry. We're still on the question of --

MS. KERR: Read the question back.

(The requested question is read by the Reporter.)

A. I think in the context of meeting the sexual morays of that community.

* * * *

Q. To your knowledge does every member of Scouting share the Boy Scouts' views concerning homosexuality?

A. Every member of Scouting signs an Application when they join. They swear to the same Scout Oath and Law and when they do that they accept the standards of the Boy Scouts of America.

Q. Do you do anything to satisfy yourself that their interpretation of "morally straight" and "clean" is the same as the Boy Scouts' interpretation of "morally straight" and "clean"?

A. No.

When they sign their Application they accept -- they agree to abide by the Scout Oath and Law.

Q. I understand that. I --

A. They are accepting that.

* * * *

Q. Do adult volunteers engage in sexual instruction or counselling?

A. Yes.

Q. In what capacity?

A. In the context of youth protection.

Q. What do you mean by "youth protection"?

A. A program of instruction or program training young people -- training members -- in an awareness program, if you will, to protect them against child abuse.

Q. Is there any other context in which adult volunteers engage in sexual instruction or counselling?

A. Not that I'm aware of.

* * * *

Q. Mr. Kay, you mentioned earlier in your testimony a woman who had applied to be a Scoutmaster.

A. Yes, I did.



Q. Did that woman actually serve as a Scoutmaster in Monmouth Council?

A. She did.

Q. You mentioned you had become aware of Mr. Dale's homosexuality by reason of his statement to that effect in a newspaper article.

How did you become aware of that newspaper article?

A. The article came to me by a number of volunteers throughout Monmouth Council who sent it to me.

Q. Do Scouting volunteers who are registered at the District or Council levels get involved in activities in which they come into contact with Scouting activities in which they come into contact with Scouting youth?

A. Yes.

Q. And can you give me a couple of examples of that kind of activity?

A. A camporee, a Boy Scout Klondike Derby.

Q. You mentioned that someone's membership had been revoked by reason of child abuse, where you had been personally involved in the revocation.

A. Yes.

Q. Was that an instance of homosexual or heterosexual abuse?

A. That was homosexual abuse.

Q. And is it your understanding that that person also had their membership revoked because of their homosexuality?

A. Yes.

Q. Do you have any reason to believe that the Boy Scouts' understanding of the term "morally straight" in regard to homosexual conduct is not widely known within the membership of Monmouth County Council?

A. I have no reason to believe that it would not be.

Q. When you were a youth in Scouting, did you have an understanding of whether homosexual conduct was morally straight?

A. Oh, I most certainly did.

Q. And what was that understanding?

A. The understanding was that it was not morally straight.

Q. Do you have any reason to believe that the Scouting policy with respect to homosexual membership started at any point after Boy Scouts of America began in 1910?

A. I have no reason to believe that it hasn't been in existence since the inception of the program.

Q. Are there kinds of heterosexual immorality which would lead to revocation of membership in Scouting?

A. Yes, there could be.



Q. If an adult volunteer Scouter advocated the morality of homosexual conduct to youth in Scouting, would that be grounds for revocation of membership?

A. Yes.

MR. DAVIDSON: I have no further questions.

MS. COSTA: Just a moment.

(Discussion off the record between Ms. Costa and Ms. Ostrow.)

REDIRECT EXAMINATION BY MS. COSTA:

Q. Mr. Kay, as a youth in Scouting, from where did you get your understanding that homosexual conduct is not morally straight?

A. It was a widely-accepted premise in Boy Scouts of America among youth members. It was just a widely-accepted premise.

* * * *